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ENVIRONMENTAL ASSESSMENT BOARD

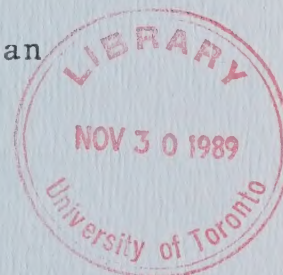
VOLUME: 159

DATE: Monday, November 20th, 1989

BEFORE: M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member



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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER OF a Notice by the
Honourable Jim Bradley, Minister of the
Environment, requiring the Environmental
Assessment Board to hold a hearing with
respect to a Class Environmental
Assessment (No. NR-AA-30) of an
undertaking by the Ministry of Natural
Resources for the activity of timber
management on Crown Lands in Ontario.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St., Thunder
Bay, Ontario, on Monday, November 20th,
1989, commencing at 8:30 a.m.

VOLUME 159

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member



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JOHN CARY,
DAVID GORDON,
WILLIAM STRAIGHT,
DAVID EULER,
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939	Document prepared by OFIA entitled: Current and Proposed Reporting/Monitoring of FMA Holders.	27748
940	Document entitled: Report of the Task Force on Forest Management Agreements dated October, 1988.	27758
941A	Hand-drawn diagram of Dr. Osborn re: conditions 43 and 54 of Exhibit 700.	27830
941B	Hand-drawn diagram of Dr. Osborn depicting inference of sampling design re: condition 54 of Exhibit 700.	27830
942	Forests for Tomorrow Interrogatory Nos. 5, 13, 39, 44, 45, 50 and 51 (Panel 16).	27851
943	Extract from Forest Service, USDA 36 CFR, Chapter 2, Part 219.	27883
944	Document entitled: Final Environmental Impact Statement, Land and Resource Management Plan, Superior National Forest.	27890
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1 ---Upon commencing at 8:40 a.m.

2 THE CHAIRMAN: Good morning. Be seated,
3 please.

4 Ms. Murphy?

5 MS. MURPHY: Just one comment, Mr.
6 Chairman.

7 Flowing from the discussion last week on
8 jurisdiction, there had been an enquiry of the Ministry
9 to give a list of the various policies and explain
10 which levels that they proceeded from, and we advised
11 all parties that that list has actually been previously
12 provided.

13 And just for the purposes of the record,
14 I will indicate that in Exhibit 528 - that exhibit is
15 actually made up of two letters with respect to a
16 couple of interrogatories that were received for Panel
17 8 - the letter lists all of the pertinent legislation
18 and all of the policies that relate to this undertaking
19 and describes generally where they proceed from. So
20 that is where all of that information can be found.

21 THE CHAIRMAN: Thank you.

22 JOHN EDWARD OSBORN,
23 JOHN CARY,
24 DAVID GORDON,
25 WILLIAM STRAIGHT,
DAVID EULER,
JAMES ALEXANDER MacLEAN,
TOM TWORZYANSKI, Resumed

1 THE CHAIRMAN: Ms. Blastorah?

2 MS. BLASTORAH: Mr. Chairman, one other
3 housekeeping matter. I have the tear sheets from the
4 notices with relation to the Dryden hearing.

5 As you may recall, at the time of the
6 hearing in Dryden I filed a copy of the affidavit
7 indicating what the notices had been and I advised that
8 I would provide the tear sheets. I now have those with
9 a covering letter to the Board.

10 THE CHAIRMAN: Very well.

11 MS. BLASTORAH: Perhaps they could just
12 be appended to the existing exhibit rather than marking
13 them separately.

14 THE CHAIRMAN: Do you have the number of
15 that exhibit?

16 MS. BLASTORAH: Unfortunately I don't
17 have it at hand. I will find it, Mr. Chairman, and
18 advise at the next break.

19 THE CHAIRMAN: Okay.

20 MS. BLASTORAH: (handed)

21 THE CHAIRMAN: Thank you.

22 MS. BLASTORAH: Next, Mr. Chairman, as
23 you will recall, when we left off Mr. Gordon was about
24 to give some details with regard to the funding
25 estimates relating to the proposed terms and conditions

1 put forward by the Ministry of Natural Resources. And
2 I would ask him to do that now. I believe he has some
3 overheads that he wishes to use.

4 MR. GORDON: Correct, Mr. Chairman. If I
5 could refer you to Exhibit No. 936 and Exhibit 936 is
6 comprised of three pages. What I have done for the
7 presentation is divided each of those pages into two
8 overheads, so we will be going through six overheads.

9 And basically what we are looking at is
10 MNR's best estimates of what the costs of the terms and
11 conditions will be. And when we went through the
12 costing exercise we worked with the main office groups
13 in Toronto and, as well, we worked with the six regions
14 within the area of the undertaking.

15 And at this point in time, although we
16 have no specific date in mind, in the future we will be
17 making a formal report to Cabinet, but we have at this
18 point in time no guarantees as to where the funding
19 will come from.

20 I think we have to recognize to some
21 degree that MNR is operating right now in a fairly
22 tight fiscal environment and the funding of these terms
23 and conditions will put a strain on MNR.

24 CONTINUED DIRECT EXAMINATION BY MS. BLASTORAH:

25 Q. Mr. Gordon, given that comment, I

1 would just like to clarify. These estimates, are these
2 dollars that would represent sort of a wish list or are
3 these intended to be a realistic estimate of what is
4 required?

5 MR. GORDON: A. These numbers are what
6 MNR believes are a realistic estimate of the dollars
7 required to deliver the terms and conditions and it's
8 the best estimate and it is what we feel is what the
9 minimum number of dollars are that we require.

10 And I think when you are looking at the
11 number, when we get to the total, we are looking at a
12 total of around \$28-million, and I think the thing to
13 take away from that number is not the specific number
14 \$28-million - although we believe it's a very good
15 estimate - but it's the order of magnitude. We are not
16 talking about \$10-million or \$15-million or
17 \$100-million or \$50-million, we are talking about \$25-
18 to \$30-million.

19 Q. And is that an absolute figure or is
20 that annually?

21 A. That's an annual figure. The
22 government is aware of the approximate magnitude of
23 these costs, but we have not sought direct approval for
24 the dollars for these terms and conditions and, as
25 well, we have not sought or made any recommendations as

1 to what the source of the dollars will be to carry out
2 these terms and conditions.

3 THE CHAIRMAN: Mr. Gordon, in the event
4 that the Board imposed various conditions that for the
5 sake of argument amounted to \$25-million and the
6 Ministry had not received Cabinet approval for an
7 additional \$25-million, is it your expectation that the
8 Ministry is faced then with one of two choices; one is
9 to take the money from existing programs in order to
10 carry out the activities which would have been approved
11 by the Board, and the other is not to carry out those
12 activities?

13 MR. GORDON: I would look at it slightly
14 differently. Either we would have to find the money
15 from within or we would have to find another funding
16 source, another source of dollars.

17 THE CHAIRMAN: So you wouldn't expect to
18 cut back on other programs?

19 MR. GORDON: If we determine that the
20 only place that we can find the dollars is from within
21 to deliver those terms and conditions, then we would
22 have no alternative but to cut back on some other
23 programs that we are presently delivering.

24 THE CHAIRMAN: You don't consider that it
25 would leave you the option of cutting back on the

1 timber management program?

2 MR. GORDON: If it came down to that the
3 only source of funds was from within our present
4 \$500-million budget within MNR, then obviously one of
5 the things we would have to look at is if there are any
6 things that we could cut back from a timber management
7 plan -- timber management program so that we could
8 deliver the ordered terms and conditions.

9 THE CHAIRMAN: Okay.

10 MR. GORDON: Having said that though, I
11 want to make it very clear that MNR is committed to
12 delivering the draft terms and conditions that we have
13 submitted.

14 THE CHAIRMAN: Well, I think you can
15 probably presume that if the Board approved the
16 undertaking with terms and conditions it would be an
17 either/or situation.

18 If you want to carry it out, you abide by
19 the conditions; if don't want to carry it out...

20 MR. GORDON: That's clearly understood.

21 We have already begun in 89-90, this
22 year, and tentatively in 90-91 begin to move dollars
23 towards some of these subject areas that are outlined
24 in the draft terms and conditions. At this point in
25 time we are finding those dollars from within, and we

1 will get to those numbers in a few moments.

2 The total estimated cost of the terms and
3 conditions is approximately -- our estimate is 12 per
4 cent of the current forest management budget within
5 MNR. If we now go to the second page of Exhibit 936.

6 MS. BLASTORAH: Now, actually, Mr.
7 Chairman, I believe 936 does have the full six
8 overheads, so this would be page 3 of that exhibit.

9 The third overhead which is titled:
10 Estimates New Funding Draft Terms and Conditions.

11 MR. GORDON: Thank you. Basically what
12 the format of this table and the next page is, you see
13 on the left-hand column the different categories of
14 areas where we require additional funding, the middle
15 column relates that to a draft term and condition, and
16 then our estimated annual cost is in the far right-hand
17 column.

18 I will go down the list, Mr. Chairman,
19 and you can advise me if I'm going into too much
20 detail.

21 The first one relates to the provincial
22 effects/effectiveness monitoring program that you heard
23 Dr. Euler, Dr. MacLean and Mr. Straight talk about.
24 And if you look at subpoints 1.1 to 1.4, the total
25 estimated annual cost of the provincial

1 effects/effectiveness monitoring program is
2 \$4.3-million; that is the addition of the 1.4, the 1.4,
3 the 1.1 and the .4.

4 THE CHAIRMAN: I take it these are in
5 addition to any costs you are spending on these
6 programs prior to these conditions being implemented?

7 MR. GORDON: That's correct.

8 THE CHAIRMAN: Is that correct?

9 MR. GORDON: That's correct.

10 THE CHAIRMAN: So this doesn't represent
11 the full cost of the program?

12 MR. GORDON: It's the full -- no, it's
13 the full cost of the program but, as I said earlier, we
14 are starting to build up towards delivering those terms
15 and conditions right now, so some of the dollars are
16 already flowing towards these projects and we will get
17 to that at the end.

18 THE CHAIRMAN: Well, for instance, if you
19 take a look at No. 3 as an example, surely you are
20 spending "x" amounts on data collection now.

21 MR. GORDON: That's correct. This is in
22 addition to the dollars we are spending now.

23 MS. BLASTORAH: Q. Mr. Gordon, just for
24 clarification. When you said this is the full amount
25 being spent on the program, what program were you

1 referring to?

2 For instance, in the first one,
3 Provincial Effects/Effectiveness Monitoring, do I take
4 it then that you meant this is the full amount being
5 spent on these particular monitoring programs?

6 MR. GORDON: A. The \$4.3-million that I
7 talked about was the estimated annual cost to deliver
8 the moose, other wildlife, aquatic and tourism
9 monitoring projects when they are at full
10 implementation.

11 Q. Yes, thank you.

12 A. And we will see later that we have
13 started to implement them, but not full implementation
14 yet.

15 Q. Thank you.

16 A. The second category on the list was
17 the wildlife population monitoring project outlined by
18 Dr. Euler, and you can see that we have an estimated
19 annual cost of \$300,000.

20 And No. 3, MNR clearly recognizes that we
21 have to make some improvements and collect more data
22 relative to timber management itself, and our estimated
23 cost for delivering what we feel is the appropriate
24 program and the appropriate level of data collection is
25 \$3.9-million annually.

1 That would include dollars, for example,
2 for carrying out more free to grow surveys, stocking
3 surveys where appropriate, making sure that we are
4 making timely inputs into the SIS program for Crown and
5 company units, ensuring such things as depletion maps,
6 maps of cut-overs are up to date and, as well, besides
7 spending the money and actually collecting the data in
8 the field, it's very important that we have money to
9 manipulate that data, store that data and analyse that
10 data at the local level.

11 Area No. 4 is Growth and Yield and that
12 relates to condition No. 51 and we estimate a minimum
13 annual cost of \$300,000.

14 Relative to the area that Mr. Cary talked
15 about, compliance monitoring and delivering not only
16 cut inspections but going beyond that to area
17 inspections, and this relates to term and condition 49,
18 we require about \$3.8-million.

19 MR. MARTEL: Will any of that be in
20 staff?

21 MR. GORDON: Built into these numbers are
22 staff dollars.

23 MR. MARTEL: That is new staff?

24 MR. GORDON: Personally I would hope it
25 will be new staff, it's hard to say how it will shake

1 out in the end. It may be a reallocation of some
2 existing staff, that may be part of the solution.
3 There is no question to deliver this program and these
4 terms and conditions we need more people doing things
5 at the field level.

6 No. 6 is Abandoned Roads, and there
7 really isn't a specific term and condition that relates
8 to this excepting that what MNR recognizes here is, we
9 have a commitment in the environmental guidelines for
10 roads and water crossings to monitor abandoned roads at
11 least every three years and there is no question we
12 will identify some problems out there that will require
13 fixing. And so we have, for the sake of this budgeting
14 exercise, identified a pot of \$1-million to deal with
15 those problems.

16 No. 7, Main Office Coordination and Audit
17 is a mix of things. It recognizes that at main office
18 we need to coordinate our training programs to a
19 greater degree, it recognizes that we have to
20 coordinate the inventory work that was talked to a
21 degree in Panel 7 by I believe Mr. Straight.

22 It recognizes, for example, in the lands
23 and waters group and outdoor recreation group that
24 there has to be an increased commitment to main office
25 audits, so there are dollars built into that for that

1 and, as well it recognizes that there will be a cost to
2 delivering the annual report in timber management and
3 the state of the forest report, and when you add all
4 those up we are talking about \$700,000 annually.

5 And if you look at those first seven
6 categories, I have called them the monitoring subtotal,
7 we are talking about around \$14-million which is about
8 50 per cent of the cost of delivering the terms and
9 conditions.

10 If we move on to the next page and
11 looking at No. 8, the inventories, the first three were
12 discussed to a degree in Panel 7; that is, 8.1
13 wildlife, 8.2 ANSIs and 8.3 fisheries, and to deliver
14 the necessary inventories for those three areas we are
15 talking about a total of \$2.9-million. That is the
16 addition of the 800,000, the 500,000 and the
17 1.6-million.

18 8.4 relates to the FRI and Ontario base
19 map mapping which is a sizeable number of dollars. And
20 as you will recall, we are on a 20-year cycle for the
21 production of FRI maps and before you can produce an
22 FRI map you must have a base map on which to overlay or
23 put your stand mapping on and to get back on and be on
24 the 20-year cycle we need to spend those numbers of
25 dollars. So right now we are not on the 20-year cycle

1 and, of course, the FRI mapping is basic to timber
2 management planning.

3 8.5, FEC, forest eco-system
4 classification, recognizes that there is some good
5 information coming out of those programs that are going
6 right now and we would like to continue that work.

7 8.6 recognizes that we are going to have
8 to carry out some other inventory work and this may
9 relate to, for example, the heritage guidelines when
10 they are finally developed. So that when we have some
11 guidelines for heritage values there will be an
12 inventory requirement, and so we have put aside some
13 dollars for carrying those out.

14 No. 9 relates to the timber management
15 planning process itself, and looking at 9.1 and 9.2 we
16 are talking about \$5.8-million. And what we are
17 recognizing there is that we are under considerable
18 strain to deliver the timber management plans as we are
19 now preparing them. And in very simple terms, we
20 believe we are meeting the minimum process requirements
21 and we are getting some good plans written, but we
22 recognize that we would like to improve generally the
23 quality of those plans beyond what they are right now
24 and to do that would require more resources.

25 No. 10, Decisions Support Modelling

1 relates to term and condition No. 48 and there is some
2 ongoing work where we are trying to develop tools to
3 assist field managers in making decisions as they are
4 moving to and working in the background for timber
5 management plans.

6 And finally No. 11, Training, recognizes
7 that we do have to carry out more training including
8 training of people who are going to be involved in the
9 timber management planning process, use of guidelines
10 and manuals and professional development.

11 If we go on to the next page--

12 MS. BLASTORAH: Q. That is page 5 of
13 Exhibit 936.

14 MR. GORDON: A. --we have got the same
15 titles on the left-hand column, we have got the number
16 of dollars we are spending in 89-90. In the next
17 column to the right we have got a tentative budget
18 proposal for 90-91, and then that's compared to those
19 same numbers from the previous pages.

20 And basically, Mr. Chairman, what I'm
21 going to do is go right down to the subtotals and the
22 total and not go through each individual number.

23 Q. And these categories relate back to
24 those on page 3 of Exhibit 936?

25 A. That's correct. And basically you

1 can see looking at the monitoring subtotal that this
2 year in those categories we are spending approximately
3 \$600,000 and our tentative budget for 90-91 is a little
4 over 4-million in comparison to what we believe are the
5 full implementation costs of 14-million. And as I said
6 earlier, this is a reallocation of MNR's base dollars
7 from other areas, it has basically been taken right off
8 the top.

9 Q. And that relates to both categories 1
10 and 2; is that correct?

11 A. That relates to 89-90. It's a
12 reallocation of base dollars and then tentatively that
13 is what we will do in 90-91. No final decisions have
14 been made for 90-91.

15 Q. I just wanted to clarify that the
16 wildlife population monitoring is captured in that
17 \$600,000 total you just gave; is that correct, it
18 relates to both categories?

19 A. Which number are you looking at?

20 Q. I'm sorry, you indicated there was a
21 \$600,00 total?

22 A. That's right. If you look down at
23 the bottom of the second column, the monitoring
24 subtotal, the number of dollars we are spending this
25 year is \$635,000.

1 Q. I beg your pardon.

2 A. And you can see the four areas where
3 we are spending that number, that money this year.

4 If we go on to the next page, which is
5 the final page in Exhibit 936, you can see for the
6 other categories this year we are spending roughly the
7 same number of dollars as in monitoring for a grand
8 total, including monitoring, of \$1.3-million. And our
9 tentative budget, all categories including monitoring
10 for 90-91, is 7-million in comparison to our estimated
11 full implementation costs annually of 28.5-million.

12 And, in summary, all I can say is those
13 are what MNR believes are the minimum number of dollars
14 and it is a good estimate, a reliable estimate as to
15 what is required to deliver those terms and conditions.

16 MS. BLASTORAH: That is the
17 evidence-in-chief for this panel, Mr. Chairman.

18 THE CHAIRMAN: Okay. Mr. Gordon, just a
19 couple of questions. There is no estimate here of any
20 expenditures by any other members of the team, so to
21 speak, like industry, for similar types of things; is
22 that correct?

23 MR. GORDON: That's correct.

24 THE CHAIRMAN: And does MNR have any
25 handle on that at all in terms of how much industry (a)

1 is presently spending; and, (b) would be expected to
2 spend at full implementation?

3 MR. GORDON: We would not have accurate
4 estimates as to how much dollars the industry is
5 spending now, nor was it part of our costing exercise
6 to estimate what they would be required to spend.

7 What you see in front of you is the
8 dollars that MNR must spend to deliver the terms and
9 conditions, and there is no question that there will be
10 some cost to the industry as well, but to meet the
11 terms and conditions that is what we require.

12 THE CHAIRMAN: Ms. Cronk, is there going
13 to be any estimation as to the cost that industry will
14 be spending in the event that the terms and conditions
15 suggested - and of course we only have before us at
16 this point the ones suggested by the Ministry - were in
17 fact part of an approval; in other words, not vis-a-vis
18 individual companies but vis-a-vis the industry itself?

19 MS. CRONK: I understand the purpose of
20 the question, sir, and it's difficult to answer in as
21 direct a way as the question is direct to me because,
22 as you will appreciate, we act for the two associations
23 whose constituent members are very broad corporate
24 based.

25 There is going to be expense and costing

1 information before you, but whether it technically
2 would be in the form that you have asked me about is
3 something I'm uncertain about and I will have to make
4 enquiries about that.

5 The other just comment that I would make,
6 sir, is you will appreciate that what you asked me was
7 whether there would be evidence relating to the
8 expenses of industry if the MNR conditions are
9 approved. Depending on what you do with those
10 conditions, if there is any variation your costs can
11 materially change with very little fluctuation in that
12 condition base. So the answer is very fluent depending
13 on what costing approach one takes and what conditions.

14 What I'm really saying to you, sir, is
15 that the industry has a different perspective with
16 respect to what these conditions should look like, that
17 I'm not sure that there will be a number for you in
18 response to the precise conditions that the Ministry is
19 proposing because it may be that the industry thinks
20 those conditions are not entirely appropriate or
21 conversely. You understand the difficulty.

22 In any event, to provide a direct answer
23 to your response, I will have to make some enquiries as
24 to the current state of the information in this
25 approach.

1 THE CHAIRMAN: All right. Well, at some
2 stage the Board would feel that it would be helpful if
3 you would canvass with your clients the proposition
4 that at some stage, should the Board not have an
5 indication in terms of attempting to evaluate the
6 public interest, what comparison there might be between
7 expenditures by the Crown in order to implement the
8 timber management planning program and expenditures
9 that industry might make in a global sense to
10 complement that program.

11 In other words, there is two elements
12 going into this equation and the public at large and
13 the province is obviously incurring substantial
14 expenditure on an annual basis, but industry is also
15 benefitting from the timber management program itself
16 as well.

17 MS. CRONK: Let me be clear, sir. There
18 will be information placed before you regarding the
19 costs and contributions made by industry.

20 THE CHAIRMAN: Right. And that is Panel
21 2, as I understand.

22 MR. CRONK: And that's not, if I may,
23 necessarily what you have just asked me.

24 THE CHAIRMAN: That's right.

25 MS. CRONK: Because that depends on what

1 approach and what terms and conditions. If you are
2 asking me whether the industry has costed and proposes
3 to lead evidence as to their costs under the MNR terms
4 and conditions, the answer is no.

5 THE CHAIRMAN: Right.

6 MS. CRONK: If you are asking me what
7 their economic contribution is, the answer is yes. So
8 it's very different.

9 But, in any event, I take your point and
10 I will determine if there is further particulars that
11 we can provide you with.

12 THE CHAIRMAN: Okay, thank you.

13 MS. BLASTORAH: Thank you, Mr. Chairman.

14 THE CHAIRMAN: Thank you, Ms. Blastorah.

15 Do you need any time to set up, Ms.

16 Cronk.

17 MS. CRONK: Just a moment or two, sir, if
18 you don't mind.

19 MR. CASSIDY: Mr. Chairman, I will be
20 asking some questions of this panel and then my
21 colleague Ms. Cronk will be finishing with some further
22 questions.

23 MS. BLASTORAH: Mr. Chairman, if I could
24 just have one moment. I can advise you that the
25 exhibit number to which those tear sheets relate is

1 exhibit 856 which is an Affidavit of Service of John
2 Dadds filed at the Dryden portion of the hearing.

3 THE CHAIRMAN: Thank you.

4 MS. BLASTORAH: Thank you.

5 CROSS-EXAMINATION BY MR. CASSIDY:

6 Q. Mr. Cary, I think I would like to
7 start and ask you a few questions, if I might, about
8 the area inspection report.

9 And as I understand your evidence, and
10 tell me if I am correct, that that area inspection
11 report process that is contemplated by your Ministry is
12 going to be carried on by Ministry staff on all units
13 be they FMA, be they CMUs, company management units, et
14 cetera, any type of management unit in the province; is
15 that correct?

16 MR. CARY: A. That's correct.

17 Q. And you indicated in your written
18 evidence that there is a form that is contemplated for
19 the area inspection report and I believe that is on --
20 perhaps you can assist us, Mr. Cary?

21 A. It's page 59--

22 Q. Thank you.

23 A. --of 16 evidence.

24 Q. And I'm wondering if you can simply
25 confirm for me, is it MNR's intention to provide the

1 licence holder, be he an FMA holder or be it a licence
2 holder in a CMU, whatever the licence holder is, for
3 the area that is being inspected and for which that
4 form is being filled out, is it MNR's intention to
5 provide that licence holder with a copy of the form as
6 it is completed?

7 A. Yes, it is.

8 Q. And when I say 'as it is completed',
9 I mean upon completion and not six months down the road
10 sitting in a district office, it would be sent as a
11 matter of routine to the licence holder once it is
12 completed; is that correct?

13 A. That's what I mean, yes.

14 Q. And, therefore, you wouldn't have any
15 difficulty and you wouldn't see any harm in that being
16 a term and condition in the terms and conditions that
17 relate to this particular area inspection process, that
18 it be provided to the licence holder in the manner I
19 suggested?

20 A. I would see that being part of the
21 procedure that the Ministry uses to instruct its area
22 inspectors on what to do.

23 Q. I see. So if there were a term and
24 condition directing that that form be provided, you
25 wouldn't have a difficulty since it is a procedure that

1 you intend to adopt; is that correct?

2 A. I would have no difficulty, no.

3 Q. Thank you. Mr. Cary, can you tell me
4 if you see any relationship between this form, the area
5 inspection report and any enforcement powers that the
6 Ministry might have or might have in the future with
7 respect to the Crown Timber Act?

8 A. Upon the completion of the area
9 inspection report, should there be a concern with an
10 act, a violation of some condition, then further action
11 will be taken and that may indeed involve some
12 infraction of the Crown Timber Act or another act. The
13 area inspection report then is the initial step in
14 perhaps taking enforcement action.

15 Q. Okay. I want to go to the form.

16 MR. CASSIDY: It may be helpful for the
17 Board to have it in front of them, if you do not
18 already have it.

19 Q. And do you have it in front of you,
20 Mr. Cary, there?

21 A. Yes, I do.

22 Q. Thank you. The form has a portion
23 called Method of Inspection, and I'm interested in the
24 portion under that that states Public Report and there
25 appears to be a checkmark there. And I'm wondering if

1 you can tell me if there would ever be a circumstance
2 where the Ministry would consider that to be the sole
3 method of inspection?

4 A. No, Mr. Cassidy. There is a -- it's
5 not clear on this report and in fact--

6 Q. That's why I asked.

7 A. --it's a mistake. But the checkmark
8 for Public Report, Other Ministry and Other, is meant
9 to register where a concern has come from. If a member
10 of the public has a concern and the area inspection
11 report is conducted in response to that concern, that
12 box would be checked. But, no, the Ministry conducts
13 area inspections, the public will not be conducting
14 area inspections.

15 Q. So I'm clear, is it your evidence
16 then that we would never see a completed form delivered
17 to one of my clients that simply has public report
18 ticked off, in fact it could be there ticked off but
19 you would always have some other method of inspection
20 ticked off such as ground survey, aerial survey, or
21 aerial photography?

22 A. That's correct.

23 Q. Again, that would be a simple matter
24 to instruct your field staff in terms of their
25 procedures?

1 A. Yes, it would.

2 Q. And you intend to do so?

3 A. Yes, we do.

4 Q. All right. Thank you on that, Mr.

5 Cary. Dr. Osborn, I want to turn to a term and
6 condition if I might for some clarification.

7 MR. CASSIDY: And Members of the Board,
8 I'm referring to term 54, subsection (b). I can advise
9 that my colleague Ms. Cronk will be asking questions
10 about other portions of this term.

11 Q. But I want to focus on that
12 particular term, Dr. Osborn, and I think there is some
13 written evidence on this at page 563 of your witness
14 statement, that's Exhibit 700, the terms and
15 conditions.

16 And do you have that term, Dr. Osborn?

17 DR. OSBORN: A. Yes.

18 Q. I'm wondering if you can help me.

19 The term refers to the annual report which you gave
20 some evidence about some time ago containing in that
21 term forest products industry statistics, and I'm
22 wondering if you can tell me what statistics you have
23 in mind there, and I'm asking you since you gave the
24 evidence on that?

25 A. At this point in time the thought is

1 that it would contain the same sort of information that
2 is currently within the statistics book that the
3 Ministry publishes annually, which is Exhibit 394, and
4 typically the information would be items like value
5 added and employment statistics.

6 Q. Anything else?

7 A. At this point in time that's the
8 consideration of what would be included.

9 Q. All right. On page 563 you do list a
10 couple of statistics and one is - 563 of the witness
11 statement - one is contribution to the economy. Is
12 part of that that value added component that you were
13 referring to?

14 A. Yes.

15 Q. Do you have any other components or
16 any other statistics that you would include in that
17 contribution to the economy that you refer to on page
18 563?

19 A. Not as far as I understand at this
20 point in time.

21 Q. Employment levels would be one, I
22 suppose?

23 A. As I just gave you, yes.

24 Q. Now, I want to stay with you for a
25 minute, Dr. Osborn, and go to term 55, subsection (d),

1 and I believe you've also given evidence about this on
2 the following pages in your witness statement.

3 And it talks about the state of the
4 forest report containing a discussion of wood supply as
5 related to the purpose of the undertaking. Correct me
6 if I'm wrong, is that some sort of analysis that you're
7 going to do on how you're doing in terms of meeting the
8 wood supply picture at that particular time the report
9 is written?

10 A. Yes, and the reason I hesitate is it
11 will describe the wood supply situation as of the past
12 five years, it will describe how well was the wood
13 supply requirement of industry met in the last five
14 years and, in addition, it will describe an estimate of
15 how well might we meet the predicted wood supply in the
16 future.

17 Q. And that's that updated analysis that
18 you were talking about on page 564?

19 A. Correct.

20 Q. And can you tell me what level of
21 industry input will be sought in terms of preparing
22 that portion of the state of the forest report?

23 A. Given the analysis will be done at
24 the management unit level, then at the management unit
25 level, whoever the planning team are, unit by unit,

1 would be the players involved in making that analysis
2 for that unit.

3 Q. So the figures then in that
4 particular portion of the state of the forest report
5 will be generated, if I may use the expression, from
6 the ground up?

7 A. Yes.

8 Q. Rather than a top down analysis?

9 A. Yes.

10 Q. And, therefore, as a member of the
11 planning team the industry could be expected to have
12 input in that fashion; is that correct?

13 A. Correct.

14 Q. Will there be any analysis done at a
15 higher level in that particular portion of the state of
16 the forest report?

17 A. Not in that portion, but the ensuing
18 portion looks at it at a more aggregated level.

19 Q. And which portion is that you're
20 referring to, sir?

21 A. If you look on page 565 of Exhibit
22 915, on page 565, listing the items within the state of
23 the forest report, item 6 alludes to wood supply
24 projections by region and cover type.

25 You've just been asking questions about

1 item 5. Item 6 will look at what the implications of
2 the results of item 5, management unit by management
3 unit, look like and in item 6 we will speak to how we
4 may try and resolve some apparent situations from the
5 management unit. And this has been described in Panel
6 3 by Mr. Armson describing woodflow analysis.

7 Q. Right. I am interested in industry
8 input, sir. I don't want to get into a discussion of
9 the details of that because I realize we've heard some
10 of that evidence before, but let's talk about the
11 industry input at that level then.

12 We've heard about it from the management
13 unit level, you're going to have your industry input in
14 that respect; what about at this level of analysis,
15 sir, what do you envisage at that level?

16 A. I would envisage that anything that
17 MNR looks at and discusses within itself as to the
18 practicalities of moving wood from unit A to unit B, or
19 the practicalities of species substitution is discussed
20 with industry--

21 Q. Mm-hmm.

22 A. --as to whether or not that is
23 reality.

24 Q. So the portions that you've pointed
25 out to us in the state of the forest report referred to

1 on page 565 you very clearly then plan on having
2 industry input into those portions as well, being that
3 next level of analysis; is that correct?

4 A. Certainly.

5 Q. And, therefore, you would see no harm
6 in a term and condition that required that there be
7 industry input and consultation with respect to those
8 portions of the state of the forest report?

9 A. I would have no difficulty, I don't
10 think MNR would either, because I don't see how it can
11 be done in isolation.

12 Q. Right, thank you. Now, I want to
13 move back to term and condition No. 54 (d), Dr. Osborn.

14 MR. CASSIDY: And it may be necessary to
15 go back to page 563, Members of the Board, of Exhibit
16 915 being the Panel 16 witness statement. Term 54,
17 subsection (d).

18 Q. And that term states that there shall
19 be contained in your annual report the government
20 revenues from stumpage and area charges and
21 expenditures on timber management.

22 I take it that the reason that those are
23 contained within the same draft term, Dr. Osborn, is
24 that you intend upon doing some comparison between
25 revenues from stumpage and area charges and

1 expenditures on timber management; am I correct?

2 DR. OSBORN: A. No.

3 Q. So that it is just happenstance that
4 they happen to be in the same term and condition?

5 A. No.

6 Q. Perhaps you can enlighten us then,
7 what is the reason for that?

8 A. Like any annual business report, it
9 will show for that past year the annual expenditures
10 have been and for that past year the direct revenues
11 received. So, like any other company, show essentially
12 a statement of expenditures and revenues.

13 Q. So - and if I may use the word
14 'your' - your purpose in putting those in the same
15 terms is not for comparing those two; is that correct?

16 A. It's just a place to put financial
17 information all in one place.

18 Q. I see. It may invite comparisons,
19 however, if you put them in the same balance sheet; is
20 that fair to say?

21 A. Yes, it is fair to say.

22 Q. And it may also be fair to say that
23 that type of comparison between those figures and facts
24 should be comparing apples and oranges and that you
25 should have a fairly consistent form of data collection

1 with respect to each one of those figures; should you
2 not?

3 A. Correct.

4 Q. And for there to be a fair comparison
5 of those two concepts, revenues and expenditures,
6 should the element of expenditure referred to in this
7 term and condition be purely silvicultural
8 expenditures, Dr. Osborn, unburdened by overhead or
9 administrative costs?

10 A. I didn't agree that there would be --
11 these data were put there for the purpose of
12 comparison.

13 Q. I understand that.

14 A. You made that inference.

15 Q. I understand that, but we're
16 talking - and you agreed with me that it might invite
17 comparison if someone were looking at it - and we're
18 now talking about whether or not that comparison would
19 be fairly done, or how it could be fairly done.

20 And I'm asking you, Dr. Osborn, if a
21 person were to make that comparison between those two
22 figures, would the fair comparison be one that had the
23 elements of expenditure only as purely silvicultural
24 expenditures and not administration, overhead costs
25 that the Ministry might incur?

1 A. Before I answer the question I'll
2 make it explicitly clear. The annual report is a flat
3 statement of past events.

4 Q. Correct.

5 A. It was explained it is a historical
6 record of what has happened. It was explained it was a
7 set of data to be used for trends, it was not - repeat,
8 not - an analytical document per se.

9 However, in answer to your question, if
10 people wish to make such comparisons, then the
11 appropriate set of data should be there.

12 Q. Right.

13 A. What those appropriate set of data
14 should be is fairly complicated.

15 Q. And that's why I'm trying to clarify
16 it, Dr. Osborn. And I'm suggesting to you, would you
17 agree with me, that if one were going to make that
18 comparison, one would have to bear in mind that the
19 expenditures that are listed there should only be those
20 expenditures that are purely silvicultural expenditures
21 and not administration and overhead expenditures?

22 A. You want it not to include overheads?

23 Q. That's correct.

24 A. I cannot see the reason for why you
25 would make such a suggestion.

1 Q. Well, can I suggest to you that
2 revenue figures from area charges and stumpage figures
3 would simply be what is paid by industry without any
4 correlation or without any component of overhead or
5 administration paid by the industry, it would simply be
6 revenue from the resource; correct?

7 A. Direct revenue to the Crown.

8 Q. Right. And that has no component in
9 it that has reflection of industry's overhead or
10 administration costs?

11 A. It has a flat direct revenue to the
12 Crown, it has bearing on what the costs or the inputs
13 or any other relevance to industry could or should be.

14 Q. Exactly. And, therefore, the other
15 side of the equation being the expenditures by the
16 Crown should also not contain overhead or
17 administration costs, simply expenditures made to do a
18 particular silvicultural activity?

19 A. No, the costs of those expended by
20 the Crown in that year to do those activities.

21 Q. Fine.

22 THE CHAIRMAN: Including overhead costs?

23 DR. OSBORN: Including overhead costs,
24 yes, the total costs incurred to the Crown.

25 MR. CASSIDY: I see.

1 THE CHAIRMAN: Well, would it not be a
2 more relevant comparison if the other figure contained
3 industry's overhead costs?

4 DR. OSBORN: Sir, if you would want to
5 get into the comparison of what the value should be,
6 first of all, I would not want to do it off the top of
7 my head; secondly, I think it is far more complicated
8 than is being hinting at right now.

9 To have a genuine cost comparison is
10 going to require a fair amount of substantial thought
11 as to what goes into the components of both sides of
12 the equation.

13 MR. CASSIDY: Q. Perhaps we can see if
14 we can agree on this then, Dr. Osborn, that in your
15 view that particular term and condition would not
16 represent, in your view, any form of accurate
17 comparison and a member of the public should not take
18 that particular term and condition as providing
19 information by which a member of the public could make
20 an accurate comparison of government expenditures
21 versus revenues?

22 DR. OSBORN: A. It's a shame you put the
23 last words on the end. It's a comparison of revenues
24 and expenditures, it's the implication behind what does
25 that mean that is not appropriate.

1 Q. Right.

2 MRS. KOVEN: Excuse me, Mr. Cassidy.

3 MR. CASSIDY: Mm-hmm.

4 MRS. KOVEN: Let me get your question
5 straight. What you're saying is that you believe if
6 the Ministry of Natural Resources reports publicly on
7 its revenues and expenditures this will somehow give
8 the public a distorted view of the entire contribution
9 of the industry to timber management?

10 MR. CASSIDY: No, the point is very
11 simple, that there should be a comparison of full
12 revenues or full expenditures. That's all my point is.

13 We're simply trying to establish that if
14 it is simply as bald as Dr. Osborn suggests it is - and
15 I think he and I are essentially agreeing - that it may
16 not be a reflection of full revenues and full
17 expenditures and, therefore, it would be tempting but
18 not appropriate to make that comparison.

19 Q. Is that correct, Dr. Osborn?

20 DR. OSBORN: A. I agree with that
21 statement, yes.

22 MRS. KOVEN: But what you want to report,
23 Dr. Osborn, to the public is exactly what income the
24 government is receiving and what money it's spending;
25 your responsibility is not to report what the industry

1 is doing?

2 DR. OSBORN: Again, I hesitate there.
3 I'm describing MNR's direct expenditures and revenues.
4 What the government -- and the reason I hesitate even
5 with your question, what the government received is
6 something in addition to that through taxation. It
7 gets complicated.

8 MRS. KOVEN: You're reporting what the
9 Ministry of Natural Resources is receiving?

10 DR. OSBORN: Correct.

11 MRS. KOVEN: Setting aside corporate
12 taxes?

13 DR. OSBORN: Correct.

14 MRS. KOVEN: All that stuff. All right.

15 MR. CASSIDY: All right.

16 MR. MARTEL: You might have a total
17 report combining all of that then in a different
18 section if you were going to try to do the complicated
19 things Mr. Cassidy is saying with industry's input.
20 It's not an industry report though.

21 DR. OSBORN: No, Mr. Martel, it's not,
22 it's a Ministry of Natural Resources report.

23 MR. MARTEL: It's not designed for that;
24 it's not designed for a comparison, it's not designed
25 to show what industry's overall costs are either, it's

1 designed to show what you're taking in from stumpage
2 and what you're spending on silviculture?

3 DR. OSBORN: Correct, sir.

4 MR. CASSIDY: Well, maybe I can come back
5 to the point. The point I'm trying to make --

6 THE CHAIRMAN: Isn't that point.

7 MR. CASSIDY: That's fine, is I'm not
8 sure whether or not this term and condition reflects
9 full government revenue.

10 Q. And are you able to comment on that,
11 Dr. Osborn?

12 DR. OSBORN: A. I'm no economist.

13 Q. I understand that.

14 A. As far as I understand revenues come
15 to the Crown from forest industry from the direct
16 stumpage and area charges.

17 Q. All right. I'll come back to you
18 later, Dr. Osborn. I want to come back to you now, Mr.
19 Cary, in terms of term and condition No. 17 and this is
20 the compliance monitoring program.

21 And I think I have your evidence right
22 from Volume 156 of the transcript being last Wednesday,
23 November 8th, Mr. Chairman, and for your reference it's
24 at page 27279. And in response to your question -- Mr.
25 Chairman, you asked:

1 "...if it is going to be compliance
2 monitoring and it's an FMA unit, it's
3 going to be the Ministry?"

4 And Mr. Cary responded:

5 "That's correct."

6 Am I correct, Mr. Cary, carrying on from
7 that, that the compliance monitoring program that's
8 referred to by term and condition No. 17, it is in the
9 Ministry's intention that that program in fact be
10 developed by the planning teams that are proposed for
11 each management unit?

12 MR. CARY: A. That's correct, Mr.
13 Cassidy.

14 Q. Now, the Chairman's question I
15 believe was in part of a discussion regarding the Table
16 4.12.X which is on page 36 of your witness statement,
17 and that is Exhibit 915, and I take it that the term
18 and condition No. 17 in fact is the term and condition
19 that speaks to this table; is that correct?

20 In other words, that table is the term
21 and condition 17's contemplated compliance monitoring
22 reporting form?

23 A. Table 4.12.X -- Table 4.12, by the
24 way, is a table in the TMP.

25 Q. Yes, I understand.

1 A. Sorry.

2 Q. I'm talking about 4.12.X.

3 A. Yes. The difference between 4.12 and
4 4.12.X is that right-hand column headed: Compliance
5 Assessment.

6 Q. Yes.

7 A. So Table 4.12.X is a registration
8 that the compliance monitoring program for areas of
9 concern has met the prescription.

10 Q. Yes. Now, term and condition No. 17
11 talks about setting out a compliance monitoring
12 program. Is Table 4.12.X part of that program?

13 A. The compliance monitoring program, as
14 I understand it, will be laid out in the area of
15 concern binder in the TMP.

16 Q. Right.

17 A. And that's part of the supplementary
18 documentation in the timber management plan.

19 Q. And this table would be the report of
20 that compliance monitoring program?

21 A. That's correct, whether that
22 compliance monitoring program was carried out -- sorry,
23 whether compliance with the prescription on that area
24 of concern was met.

25 Q. All right. Would be reflected in

1 this table?

2 A. Yes.

3 Q. And can you tell me, who is supposed
4 to complete that table, the person or persons?

5 A. The Ministry is responsible for the
6 compliance monitoring program and the area inspection
7 reports are retained at the Ministry office, so in the
8 case of FMAs, for example, the designated Crown
9 representative will supply the planning team with the
10 information with which they can complete this table.

11 Q. All right. So it will be not an
12 industry forester that will complete that table; is
13 that correct?

14 A. That's correct.

15 MR. CASSIDY: Go ahead.

16 MS. MURPHY: I'm concerned we might have
17 a little confusion. My friend has asked earlier in the
18 question whether that table is what is referred to in
19 term and condition 17. It's my understanding, and
20 perhaps just to clarify, that this table is actually
21 what is referred to in draft term and condition No.
22 8(d) and not in No. 17.

23 Perhaps one of the witnesses could have a
24 look at that and make sure that we aren't confusing
25 things.

1 MR. CASSIDY: Q. Well, did any of the
2 witnesses agree with their counsel on that?

3 MR. CARY: A. The term and condition No.
4 17 says that:

5 "MNR shall ensure that timber management
6 plans outline a compliance monitoring
7 program...for 'areas of concern'."

8 So that isn't Table 4.12.X.

9 Q. Is not?

10 A. No. As I said, the area of concern
11 monitoring program is part of the AOC binder in the
12 TMP--

13 Q. Yes, I understand that.

14 A. --that's completed after the
15 compliance monitoring program has been in place and
16 after the area of concern has been -- the prescription
17 has been met. Now, 8(d) is the report of past forest
18 operations, that's the term and condition that speaks
19 to what's contained in the report of past forest
20 operations.

21 Q. Right.

22 A. And 8(d) is a summary of the
23 monitoring results for areas of concern, and indeed
24 that last column on the right of Table 4.12.X is indeed
25 that, is what's referred to in 8(d).

1 Q. Fine. But the actual table will be
2 in the timber management plan from which information
3 will be culled to go into the state of the forest
4 report; is that correct?

5 A. The state of the forest...

6 Q. In other words, this table, 4.12.X, I
7 assume is going to be in the timber management plan?

8 A. It's part -- yes, Table 4.12.X is
9 part of the report of past forest operations.

10 Q. In the timber management plan?

11 A. That's correct.

12 Q. All right. And that's going to be
13 prepared by, in the FMA context, the district Crown
14 representative?

15 A. The information will be supplied to
16 the planning team by the designated Crown
17 representative.

18 Q. All right.

19 THE CHAIRMAN: Mr. Cary, does that not
20 envisage that the Crown representative will actually
21 verify the information to be contained in that form?

22 In other words, if there is going to be
23 compliance monitoring and it's going to be done by the
24 Crown, is the Crown not going to verify to itself that
25 the information contained in this summary is in fact

1 true by going there and making inspections, et cetera,
2 or are they just going to take the word of the FMA
3 holder's representative that in fact these things have
4 been complied with and then just fill out the form?

5 MR. CARY: The monitoring of areas of
6 concern will be conducted by the Crown, and the Crown
7 will then, via the area inspection process, will retain
8 those reports and those reports over the five-year term
9 will be used to complete Table 4.12.X.

10 So the Crown goes out, checks to see that
11 the area of concern, the prescription has been met by
12 the area inspection.

13 THE CHAIRMAN: Well, isn't it the Crown
14 then that is providing itself with the information to
15 be inserted in these reports rather than receiving the
16 information from the party that's carrying out the
17 activity; namely, the FMA holder?

18 MR. CARY: That's right, but the planning
19 team verifies -- and the planning team consists of the
20 industrial principal author, together they will verify
21 that Table 4.12 is indeed correct.

22 THE CHAIRMAN: I'm more interested in the
23 source of the information.

24 MR. CARY: The Ministry of Natural
25 Resources goes out onto the FMA lands and conducts area

1 inspections.

2 THE CHAIRMAN: Okay. And that's the
3 principal source of the data which finds its way into
4 this summary report?

5 MR. CARY: That's correct.

6 THE CHAIRMAN: Okay.

7 MR. MARTEL: That's for areas of concern.
8 What happens in normal operating areas; do you have a
9 table for that as well that says monitoring has been
10 done, compliance monitoring has been done for normal
11 operating areas, what you consider normal operating
12 areas?

13 MR. CARY: We have no table, Mr. Martel,
14 but --

15 MR. MARTEL: How will that be recorded
16 then?

17 MR. CARY: It will be recorded -- each
18 area inspection report and all those technical
19 inspections that I mentioned in my lead will be at the
20 district office, retained at the management unit.

21 MR. MARTEL: In a form that's going to be
22 consistent right across the area of the undertaking
23 or --

24 MR. CARY: That's right.

25 MR. MARTEL: We haven't seen that though?

1 MR. CARY: The area inspection form in
2 the evidence will be that form, and that form will be
3 used across the area of the undertaking.

4 MR. CASSIDY: Q. That's the form I was
5 asking you questions about earlier; correct?

6 MR. CARY: A. That's right, yes.

7 MR. MARTEL: Okay.

8 MR. CASSIDY: Q. Can I take you to
9 paragraph 13 of your witness statement which is page
10 11.

11 MR. CASSIDY: Mr. Martel, are you clear
12 in that respect now?

13 Q. Your statement in paragraph 13,
14 that's page 11 of the Exhibit 915, states that:

15 "There is a new requirement for authors
16 of timber management plans to set out a
17 local compliance monitoring program for
18 areas of concern."

19 Just so I'm comparing the same thing now,
20 that is what is spoken to in term and condition No. 17;
21 right?

22 MR. CARY: A. That's right.

23 Q. Okay. Now, I always understood that
24 when we talk about authors of timber management plans
25 we talk about a guy who has a seal and he calls himself

1 a RPF and that in FMA units that's the industry
2 forester; in company management units it would be
3 the -- or Crown management units it would be the unit
4 forester. Now, is this author here the same person, or
5 is this the planning team who are the authors that you
6 refer to in paragraph 13?

7 A. No, the author of the timber
8 management plan must lay out the compliance monitoring
9 program -- a compliance monitoring program.

10 Q. So you're suggesting then on an
11 FMA --

12 A. And he's part of the planning team.

13 Q. Just let me finish my question.
14 You're suggesting that on an FMA unit then it is the
15 industry/company forester who has to prepare a
16 compliance monitoring program?

17 A. Yes, in conjunction with the planning
18 team.

19 Q. All right. So it's the planning team
20 that in fact prepares it. It may be the industry
21 forester who drafts a bald draft, but it's the planning
22 team that in fact writes the thing?

23 A. I would say they -- not being a
24 member of a planning team, I would say that the
25 approval for that compliance monitoring program must

1 come from the planning team.

2 Q. I see. There's a Ministry forester
3 on those planning teams, even in FMA units the district
4 Crown rep sits on that planning team?

5 A. That's right.

6 Q. Has thought been given to having that
7 forester draft the compliance monitoring program?

8 A. No, there hasn't been. I'm not aware
9 of any thought in that regard.

10 Q. Do you see any harm in that?

11 A. I would suggest that the involvement
12 of the industrial forester would be key in the
13 development of a sensible compliance monitoring program
14 and that the Ministry forester shouldn't be doing that
15 in isolation, that the planning team should be doing it
16 and indeed the industrial input into a compliance
17 monitoring program --

18 THE CHAIRMAN: Mr. Cary, it's not solely
19 a matter of input as opposed to the credibility
20 question; and, that is, the industry in effect
21 regulating itself on an FMA unit.

22 The industry obviously is going to be
23 carrying out the activities, or the majority of the
24 activities on an FMA, and if they are the ones that are
25 the principal authors of the compliance monitoring

1 program - notwithstanding that there are checks and
2 balances in the sense that there's a planning team and
3 a Crown forester on the planning team - would you not
4 consider it to have more credibility in the public's
5 mind if in fact the program designed to ensure that the
6 activities are carried out appropriately are authored
7 by someone other than the industry forester?

8 Regardless of the professional
9 qualifications, I think it is probably fair to say that
10 there is at the least suggestion of a possible conflict
11 of interest in terms of a company forester. A company
12 forester is a professional, obviously - and nobody is
13 taking that away from him - but he works for a company;
14 the Crown forester works for the Crown and presumably
15 works solely in the public interest and doesn't have
16 this overriding concern that an activity that doesn't
17 generate a particular level of profit is perhaps going
18 to be suspect by that person's employers.

19 MR. CARY: The planning team has the
20 overall authority, and the district manager is
21 responsible for making those decisions.

22 THE CHAIRMAN: But why couldn't the Crown
23 forester prepare the compliance monitoring program with
24 the input of the company forester, just putting the
25 emphasis a little differently that's all.

1 MR. CASSIDY: I can say that's exactly
2 the point that we were going to get to in terms of
3 suggesting who has the responsibility to do it, Mr.
4 Chairman.

5 MR. MARTEL: When the police look at -- I
6 mean, you've heard it as well as I, when the police do
7 an investigation of the police, and there's just an
8 uproar, the House in Toronto just goes mad. I mean,
9 it's because you shouldn't be asking someone, I think,
10 to monitor themselves.

11 You're not going to have the credibility
12 that's required if the company is forced to do the
13 activity and then report to the Ministry we in fact
14 have done it. If you want to get cynicism out there,
15 that's the prize way of doing it that I could think of.
16 I mean, you couldn't think of a better way to create
17 doubt in the public's mind.

18 MR. CARY: Dave Gordon who has been
19 involved in management planning much more recently in
20 this I think can add something to this discussion.

21 MR. GORDON: Maybe we can get right to
22 the bottom line here. I was on a planning team and we
23 didn't have this requirement, it will develop a
24 compliance monitoring plan for each area of concern,
25 but in my estimation this is exactly how it will work,

1 in that the planning team will be familiar with the
2 area of concern and what you're trying to achieve with
3 the area of concern prescription, and so there is some
4 advantages in listening to the people around the table
5 including the industry as to what would be an
6 appropriate compliance monitoring program.

7 But very clearly, for example, when I was
8 chairing the planning team for the Big Pic Unit in
9 Terrace Bay, very clearly if there was some
10 disagreement between the industry and the Crown as to
11 what the compliance monitoring program should be for
12 that area of concern, there's no question that MNR will
13 win the day, that we will be putting in that plan the
14 compliance monitoring program that MNR feels is
15 appropriate.

16 THE CHAIRMAN: But why not have the Crown
17 forester's signature and name on that compliance
18 monitoring program so that there is no doubt in the
19 public's mind that the Crown has won the day, as
20 opposed to the author of the plan which, on an FMA unit
21 presumably, was the company forester?

22 MR. GORDON: I think that's something we
23 could consider.

24 THE CHAIRMAN: I mean, it's as simple as
25 that. You go about it the same way, obviously the

1 company forester has all the input that he wishes, but
2 in the end the public perceives that the Crown got its
3 way, why; because it's the Crown forester's name as
4 author of the compliance monitoring program, period.

5 MR. CARY: Yes, I take your point, Mr.
6 Chairman. I think it's something we should --

7 MR. MARTEL: I think it's got to go one
8 step further, if I might add though. I mean, not just
9 a signature, I think the public has to believe that the
10 unit forester who represents the Crown who in fact
11 represents the public is the person who is out there in
12 the field doing the inspection and they've got to know
13 that, otherwise there is going to be tremendous
14 cynicism.

15 MS. MURPHY: Well, I'm just concerned
16 that when we're maybe taking this one step further
17 there is no question, and the evidence is, that the
18 actual carrying out of the monitoring is the
19 responsibility of the Ministry.

20 What you're talking about right now is
21 writing down in the plan what specifically should be
22 done for each area of concern. There is still the next
23 step of actually doing it, just so that we're not
24 confusing the two matters.

25 MR. MARTEL: And I'm saying that you've

1 got to make sure that the public understands that, that
2 it's not only a unit forester representing the Crown
3 that does the inspection; he finalizes the report, but
4 that has to be abundantly clear, I think, for the
5 public to accept it.

6 MR. GORDON: Well, is it not clear though
7 when the Ministry finally approves that plan that they
8 are approving the compliance monitoring plans for those
9 areas of concern and we will not approve the plan
10 unless it says exactly what we feel is necessary.

11 THE CHAIRMAN: Well, that's one way of
12 getting to the end result, yes, the district manager
13 approves the plan; but it would sell better with
14 respect, Mr. Gordon, if the compliance monitoring
15 program part within the plan were seen to be developed
16 by somebody other than the company forester.

17 MR. GORDON: Your point is well taken and
18 we will have to consider the appropriate way to make
19 sure that the public clearly gets that message.

20 MR. CASSIDY: Q. Well, maybe I can make
21 a suggestion in terms of how that planning team works.
22 Like Mr. Cary, I have never sat on a planning team, but
23 as I think I asked earlier, there is a district Crown
24 rep who sits on the planning team; right, he is a unit
25 forester in other words from MNR; is that correct, Mr.

1 Gordon?

2 MR. GORDON: A. That's correct.

3 Q. So if I can put more work onto the
4 district Crown rep, it would be possible since he's at
5 those meetings - it's not like we're importing him in -
6 it would be possible for him to hear the discussion
7 from among the various planning team members such that
8 he could design the compliance monitoring program, put
9 his signature on it for the Board's satisfaction and, I
10 might add, the public's satisfaction and, therefore,
11 achieve the objective that the Board has in mind; is
12 that correct, it is possible?

13 A. That's correct, that is possible and
14 that would be a good direction to go.

15 Q. And it's a practical solution to the
16 suggestion that the Chairman has made; is that correct?

17 A. That's correct, I agree.

18 Q. All right. It's nice to know I don't
19 propose anything impractical.

20 All right. If I can move to -- sticking
21 with you for a second again, Mr. Gordon, to term and
22 condition No. 43 and I want to ask you, there's a word
23 that has me somewhat troubled in the sense I don't know
24 what it means; and, that is, in term and condition 43
25 it talks about various data being collected.

1 THE CASSIDY: And I can advise right now,
2 Mr. Chairman, that Ms. Cronk will have some further
3 questions in another area related to this term and
4 condition.

5 Q. I, however, want to focus on
6 "condition" information in the fourth line and I just
7 simply want to know what it is that the Ministry has
8 contemplated there in term and condition No. 43?

9 I'll give you a minute if you need to
10 look for it.

11 You list other assessment data:

12 "...Free to Grow, second-year survival
13 and other "condition" information shall
14 be reviewed every five years..."

15 And this all goes into your report of
16 past forest operations. What does that mean, that word
17 "condition" information?

18 MR. GORDON: A. For the Board's
19 information - and I don't think it's necessary that
20 they do this and I'm sure they don't have it with
21 them - but we talked about this subject area in Panel 4
22 and, just for your reference, we provided a summary of
23 what condition surveys are on page 160 of Panel 4, and
24 basically we said on that page that there are three
25 categories of condition surveys; there's the survival

1 survey, second-year survival, there's stocking surveys,
2 and then there's any other types of surveys that the
3 local manager feels are necessary to collect some data
4 that may enable that manager to make a decision
5 relative to future actions.

6 And what could be some other condition
7 surveys that take place, you may be contemplating
8 carrying out a herbicide treatment, so you may want to
9 go out and assess the competition and you may make
10 notes of that and that information would be available
11 to compare it to the results of that competition
12 treatment, and you may wish to report in the report of
13 past forest operations an overview of what you're
14 finding out through these other condition surveys.

15 There's nothing specific in mind, it's
16 the results of any other surveys that the local manager
17 takes -- carries out that may provide him with some
18 information that will enable the local manager to
19 provide a summary of silvicultural effectiveness in the
20 report of past forest operations.

21 Q. All right. But the page reference
22 you gave us, page 160, the term is "condition" surveys
23 to include survival surveys and stocking assessments,
24 and then (3) being a catch-all, being any other?

25 A. That's correct.

1 Q. Is it contemplated by term and
2 condition No. 43 that those two that are mentioned on
3 page 160, survival and stocking assessments, would be
4 included in that other condition information?

5 A. I would expect they would, but we're
6 not saying thou shalt do certain things, what we're
7 saying in that condition that in each timber management
8 plan, whether it's for a company unit, an FMA unit or a
9 Crown unit, we will present a summary and discussion of
10 silvicultural effectiveness and the local manager will
11 have to use whatever data he or she has available as a
12 foundation for that discussion.

13 Q. Right.

14 A. And so what we did in that term and
15 condition was provide examples of where we think that
16 information would come from.

17 Q. Okay.

18 A. We're not saying that it's mandatory
19 that they do those certain things; likewise though we
20 have to recognize that you will have to do something
21 like that to have the information base to carry on that
22 discussion that is a requirement of term and condition
23 43.

24 Q. Stocking assessments was clearly
25 referred to as one of the condition surveys that Panel

1 4 recognized as being valuable; is that correct?

2 A. That's correct.

3 Q. And would there be any harm then in
4 having stocking assessments being a required data that
5 should be reviewed in the report of past forest
6 operations for each management unit?

7 A. No.

8 Q. Would you, therefore -- all right.
9 Well, thank you.

10 THE CHAIRMAN: Mr. Cassidy, I think we're
11 going to take a break at this time.

12 MR. CASSIDY: All right.

13 THE CHAIRMAN: 20 minutes. Thank you.

14 ---Recess taken at 10:00 a.m.

15 ---On resuming at 10:25 a.m.

16 THE CHAIRMAN: Thank you. Be seated,
17 please.

18 MS. CRONK: Mr. Chairman, just before we
19 begin, I wonder if I could raise a scheduling matter.
20 I have had a number of enquiries from counsel as to
21 whether there has been any indication from the Board as
22 to when you would prefer or be inclined to hear our
23 submissions regarding the standard of conduct issue and
24 I raise it because in at least one -- there are a
25 number of scheduling difficulties for a number of

1 counsel involved, and at least one is scheduled to be
2 back in Toronto for most of the week. So I wondered if
3 we could ask for your indulgence to give us some
4 guidance on that.

5 THE CHAIRMAN: Well, it was our intention
6 to do the following: Tonight we are going to deal with
7 the scoping of the Baskerville evidence, Mr. Turkstra
8 is scheduled to appear some time around dinner time,
9 and later in the day we will try and give a time when
10 we will actually sit for the scoping of that evidence.

11 We were hoping to possibly deal with
12 submissions from counsel on the standard of conduct
13 late tomorrow, and that was after we had gotten in as
14 much of the evidence as possible during the day.

15 Now, we still have the scoping of the
16 Panel 17 evidence and it was our view that we might put
17 that off until next week. We still have next week to
18 complete the cross-examinations of this panel and we
19 don't anticipate, since we will be breaking for the
20 Baskerville evidence for a two-week period, that it
21 would prejudice anybody in terms of the Panel 17
22 evidence.

23 Does that pose a problem for you?

24 MS. CRONK: Mr. Chairman, I wonder if I
25 could ask at least for this possibility: Given that

1 the Board will be sitting tonight to entertain the
2 scoping session with respect to Dr. Baskerville in any
3 event, I wonder if we could at least attempt to find
4 out if other counsel would be available at the end of
5 the day to speak to this matter, and if any difficulty
6 arises with respect to other counsel, of course, we
7 will inform the Board immediately, I simply mean we
8 will get on the phone and find out, if the Board were
9 prepared to do that, or perhaps I wonder at a minimum
10 if the Board would be prepared to receive submissions
11 from some of the counsel present today, or would that
12 be inconveniencing the Board in terms of its schedule?
13 ---Discussion off the record

14 THE CHAIRMAN: See, we are not sure how
15 long the scoping session for Baskerville is going to
16 last. We have certain things that we want to say about
17 that and, based on the statements of issues put in by
18 the various parties, it may in this case last a bit
19 longer than some of the other sessions, we anticipate
20 that, and we are not sure exactly at this point in time
21 when we can start that, it depends on Mr. Turkstra
22 arriving.

23 MS. CRONK: I thought perhaps, sir, that
24 if it was not inconvenient to the Board perhaps some of
25 these other submissions might be received at the end of

1 the day at 5:00 or 5:30 depending on -- I had
2 understood that Mr. Turkstra was taking an early
3 evening flight in and, subject to when he's arriving,
4 it may be that there will be sufficient - obviously, if
5 there isn't, we will be here when necessary - but if
6 there was sufficient time, then we would make some
7 effort to contact counsel and see what we could do for
8 the end of the day today for an hour or so.

9 THE CHAIRMAN: Okay. Why don't we
10 attempt to do that. As I say, if Mr. Turkstra isn't
11 arriving until early evening, as long as we have some
12 time for some type of short dinner break--

13 MS. CRONK: That would be very much
14 appreciated, sir.

15 THE CHAIRMAN: --we may be able to
16 entertain something later in the day.

17 MS. CRONK: That would be very much
18 appreciated, sir. I will see what I can do.

19 Thank you.

20 THE CHAIRMAN: Okay.

21 MR. CASSIDY: Mr. Chairman, I have asked
22 Mr. Gordon to put Exhibit 935 back up on the overhead
23 and you see that off to your right.

24 Q. That is in fact page 8 of 935; is
25 that correct, Mr. Gordon?

1 MR. GORDON: A. I don't have the page
2 number in front of me.

3 Q. Well, perhaps you can take my word
4 for it since your copy you gave me has page 8 on it.

5 A. You are correct.

6 Q. Thank you. And I want to turn to the
7 last message of the final messages on that page and it
8 appears to be twofold, being that:

9 "The Ministry recognizes its
10 responsibility to provide meaningful
11 information to the public on the state of
12 the timber resource and as well as its
13 future."

14 You then go on to state:

15 "However, the public reporting function
16 must not hinder the unit manager's
17 ability to manage the resource."

18 I assume that means the timber resource?

19 A. That's correct.

20 Q. And I'm wondering if you can tell me,
21 Mr. Gordon, do you have a particular situation or
22 situations in mind there when you put that 'however' in
23 and underline it on Exhibit 935?

24 A. I have no specific situations in
25 mind. What I was thinking when that was written was, I

1 was thinking about the potential cumulative effect of
2 any reporting requirements, and all I'm asking the
3 Board is to consider that when they are detailing what
4 the reporting requirements should be to the public or
5 to other ministries or whatever, that they weigh the
6 availability of the unit manager's time so that he or
7 she is left with some time to manage the resource, and
8 when it's a requirement that we report something to
9 someone, that there be a real reason for doing that.

10 Q. All right, thank you. I want to turn
11 now to you, Dr. Euler, and if somebody wants to turn
12 that bulb out so it doesn't blow again.

13 Thank you, Dr. Osborn.

14 Dr. Euler, I want to turn to what I
15 believe is Exhibit 923 and that is collected with the
16 other materials on the updates of the various studies
17 and inventories that the Ministry is going to be doing
18 as part of its effects and effectiveness monitoring.
19 It was served on us pursuant to Ms. Murphy's letter of
20 October 5th, 1989.

21 MR. CASSIDY: Does the Board have that in
22 front of them, the Exhibit 923? It's entitled: The
23 Wildlife Habitat Inventory and Population Monitoring
24 Projects.

25 Q. And if I can ask you to turn to page

1 2 of that document, Dr. Euler. Do you have that in
2 front of you?

3 DR. EULER: A. Yes, I do.

4 Q. And if you look at the very bottom of
5 that page, the very last paragraph reports that your
6 Ministry has struck a provincial committee that will
7 provide advice and recommend procedures for conducting
8 wildlife habitat inventories. And, as I understand it,
9 you have the job of being the chairman of that
10 committee; is that correct?

11 A. Yes.

12 Q. And your committee is going to review
13 inventory methodology and application of the data and
14 recommend improvements in conducting and applying
15 inventory data in timber management plans.

16 MR. CASSIDY: Does the Board see that
17 portion of the document?

18 Q. If you then flip to Appendix 3 which
19 was referred to immediately following the words I just
20 referred to, Appendix 3 seems to set out some tasks for
21 your committee; is that right, Dr. Euler?

22 DR. EULER: A. Yes, that's correct.

23 Q. And among those tasks is task No. 6.

24 MR. CASSIDY: That appendix, Members of
25 the Board, can be found at the back of that study or

1 that report, rather.

2 Q. Do you have that appendix, Dr. Euler?

3 DR. EULER: A. Yes, I do.

4 Q. And it states:

5 "Recommend direction of training and
6 audit procedures for wildlife habitat
7 inventories."

8 And I'm wondering if you can tell me, Dr.
9 Euler, have you any idea as to what the audit
10 procedures that your committee is considering or will
11 possibly consider pursuant to that task?

12 A. Well, I have a general sense of what
13 they will be, although we do not yet have specifics.
14 You will recall in the evidence that we gave we talked
15 about how the audit procedure for wildlife in general
16 in the province needs some attention and improvement
17 and that will be going on, and in this phase of it we
18 will be developing audit procedures--

19 Q. Right.

20 A. --for main office staff to use in
21 looking at what regions do. They are not yet
22 developed.

23 Q. All right. Well, maybe I can explore
24 that then. In terms of the audit procedures, is it
25 contemplated -- as best you can at this point, is it

1 contemplated those audit procedures would have some
2 sort of mechanism to audit how those inventories are
3 going to be conducted?

4 A. Yes.

5 Q. And in terms of how those inventories
6 are going to be conducted, would the audit procedure
7 contemplate some sort of checking or some sort of
8 verification process to ensure that the inventory is
9 accurate?

10 A. Yes.

11 Q. And would that process include some
12 sort of verification of sightings, for example?

13 A. Yes, I would think so.

14 Q. Okay. So that if a person who is
15 assigned the task of going out looking for wildlife
16 habitat determines that there is in a particular area a
17 wildlife habitat suitable for a particular species,
18 that audit procedure that is contemplated here in task
19 6 you would think would include a mechanism to verify
20 that particular sighting?

21 A. Yes, I would think so.

22 Q. All right. And that mechanism or
23 that verification obviously would be done by someone
24 other than the person who actually did the sighting?

25 A. That's right.

1 Q. You wouldn't simply require him to go
2 out and reconfirm his own sighting?

3 A. Yes, that's correct, there would be
4 something there. Now, we don't have any details yet,
5 but that would be the principle that we would work
6 towards.

7 Q. And as chairman of the committee you
8 would want to see that type of principle--

9 A. Yes.

10 Q. --enshrined in those auditing
11 procedures?

12 A. Yes.

13 Q. Any expectation that your desires are
14 going to be overruled, Dr. Euler?

15 A. No, I don't think so.

16 Q. I didn't think so.

17 A. I think that would be a general
18 desire of the Ministry as well.

19 Q. I suppose that that habitat inventory
20 and that audit procedure would also apply to
21 inventories of actual sightings of species?

22 A. Yes, the principle would apply.

23 Q. Okay. I want to now take you, Dr.
24 Euler, back to the MGEM, Moose Guidelines Effectiveness
25 Monitoring, which I believe is Exhibit 920.

1 And, first of all, can you give me a time
2 frame on how long that study is expected to take or how
3 long that program is expected to occur, Dr. Euler?

4 A. I can give you a time frame in very
5 general terms. We are thinking on the order of 10
6 years.

7 Q. And I understand that you -- does the
8 Ministry consider that that program is up and running?
9 It's in fact started in your view; right?

10 A. Yes. Yes, it has begun.

11 Q. But it's safe to say it's probably in
12 its very first year?

13 A. Yes, that's very safe to say.

14 Q. So we are talking the year 2000
15 approximately that the study would be completed?

16 A. Yes, that would be an approximate
17 completion of the study.

18 Q. All right. I will come back to that
19 in a minute. I want to take you though directly to
20 page 13 of that exhibit, and I assume you are the
21 person who can help me on this, Dr. Euler?

22 MR. CASSIDY: Does the Board have that
23 page in front of them?

24 Q. It's at the very bottom of that page.
25 You see the two graphs there, Dr. Euler?

1 DR. EULER: A. Yes, I do.

2 Q. Immediately below those two graphs is
3 the statement:

4 "Cooperation with timber companies
5 operating within the study area will be
6 essential, and in other studies such
7 cooperation has led to major
8 efficiencies."

9 I'm not sure whether you were the author
10 of those words, but can you assist me if you can, Dr.
11 Euler, in explaining or giving examples of some of
12 those other studies that that particular provision or
13 statement is referring to?

14 A. I can't go into any depth just from
15 memory. If you want specifics, like specific companies
16 or specific places and times--

17 Q. Whatever you can give me.

18 A. --we would have to make some
19 telephone calls and come back with that information.

20 Q. All right.

21 A. See, I just know that in general,
22 just from operating in Ontario over the past several
23 years and in discussing this matter, I know that that
24 is true, but I didn't come with lists of companies and
25 times and places. We would have to make some phone

1 calls to get that if you want it.

2 Q. Fair enough. If you want to make
3 some enquiries and get back to me between now and the
4 end of this panel, I will deal with it in that fashion.

5 A. Could you just give me an indication
6 of what you would like to know?

7 Q. I'm just simply interested in if you
8 can help the Board by giving them examples of the
9 studies that you were talking about in terms of the
10 subject matter of the study.

11 If you are able to provide and identify a
12 company name, then fine, but I am primarily interested
13 in the subject matters and natures of those studies,
14 and we will take a look at it from there. Does that
15 help?

16 A. Yes, that's fine.

17 Q. All right.

18 A. And we will undertake to come back
19 with -- would three or four examples be enough?

20 Q. Yes. If you can be exhaustive in the
21 sense if you find that there are, you know, two dozen
22 or 36 and you have got them readily at hand, fine; if
23 it's hundreds, then obviously I don't want to -- we
24 have got enough paper, you can give me an example.

25 A. And do you want this to be just in

1 Ontario or what about other parts of Canada?

2 Q. Well, insofar as the studies are of
3 use to you in Ontario, that would be helpful as well.

4 A. Yes.

5 Q. Thank you. Mr. Straight?

6 MR. STRAIGHT: A. Yes.

7 Q. I'm wondering, and I believe you are
8 the person who can help me on this, if you can tell me
9 if MNR is going to do any studies in the future to
10 analyse any socio-economic impacts caused by the loss
11 of merchantable timber due to the establishment of a
12 reserve, a buffer zone and/or an AOC? Is there any
13 study of that nature contemplated?

14 A. There are none of that nature that I
15 am aware of.

16 Q. Is there any reason why not?

17 A. Now, explicitly you are wondering if
18 there is any reason why MNR wouldn't sponsor studies to
19 look into the economic losses or the economic
20 consequences of employing, for example, a reserve on a
21 lake?

22 Q. The impacts.

23 A. The impacts of doing that. The
24 primary reasons would be a function of need and
25 feasibility and cost of doing that kind of work which

1 would have to be explored and there are some -- there
2 are a fair amount of significant difficulties in
3 undertaking work of that particular nature.

4 Q. All right. Well, I want to follow
5 that up with you, Mr. Gordon, and ask a few other
6 questions about effectiveness or impacts. And are you
7 aware of any studies that the Ministry is going to do
8 to analyse the effectiveness of herbicides now in use?

9 MR. GORDON: A. Well, obviously at the
10 unit level the unit manager, whether it's a company
11 person or a Ministry person, is always analysing the
12 effectiveness of a certain treatment.

13 Q. Right.

14 A. We are committed, for example,
15 towards a growth and yield program and inherent in that
16 program we'll be carrying out measurements on areas
17 that are treated and some of those treatments will
18 include tending and, therefore, for those areas built
19 into the growth and yield will be an assessment of the
20 effectiveness or the effects of that treatment.

21 Q. Right.

22 THE CHAIRMAN: Ms. Murphy?

23 MS. MURPHY: I was just going to comment.
24 Mr. Gordon has made some mention of the provincial
25 level growth and yield, I just thought it would be wise

1 to point out that detailed information about assessment
2 of effects and effectiveness of these products was
3 dealt with in Panels 12 and 13 and that we advised then
4 that generally a lot of the information about
5 monitoring and so forth was discussed at that time by
6 those expert witnesses.

7 MR. CASSIDY: Fair enough. I don't
8 intend to get into the details of any study whatsoever,
9 I'm simply observing that we have heard a lot of
10 evidence about effectiveness monitoring studies that
11 are going to occur with respect to Exhibits 920 through
12 to 924 approximately and I just want to see if there is
13 any others that are coming down the pipe.

14 Q. And in that respect, is there any
15 effectiveness study, Mr. Gordon, going to be undertaken
16 to analyse the effects on the forest estate of not
17 using herbicides?

18 MR. GORDON: A. I'm not aware of any
19 such studies.

20 DR. OSBORN: A. Mr. Chairman, if I could
21 make a statement at that point, and it was no doubt
22 raised in Panels 11 and 12. Any scientific experiment
23 that is done vis-a-vis a treatment type like herbicide
24 will inevitably contain a control.

25 Q. Well, what is your point, Dr. Osborn,

1 is it that --

2 DR. OSBORN: A. Therefore studies will
3 be done --

4 Q. Just a second, I will ask you the
5 question, then you can answer it.

6 Is your point then that you are going to
7 have those studies done of the effect of the forest
8 estate of not using herbicides?

9 A. As I inferred, any study of a
10 treatment will include a control which will indicate
11 the effect of not applying the treatment.

12 Q. Fine, thank you. Now, coming back to
13 you, Mr. Straight, you gave some evidence - and it may
14 be helpful for the Board to have the page reference at
15 Volume 157, page 27454 - and you stated, and I think we
16 are talking in the context -- do you have that in front
17 of you?

18 MR. STRAIGHT: A. No, I don't.

19 Q. Oh, all right. It may be helpful for
20 you to have it. It's Volume 157, page 27454.

21 Getting close to Exhibit 1000.

22 THE CHAIRMAN: At the rate you are going
23 it is going to be you.

24 MR. CASSIDY: Well, I don't know, Mr.
25 Chairman.

1 THE CHAIRMAN: At which time we expect
2 that no expense will be spared.

3 MS. CRONK: Sit down, Paul.

4 MR. CASSIDY: I have no further
5 questions, Mr. Chairman.

6 (laughter)

7 MR. STRAIGHT: Yes, I have it now, Mr.
8 Cassidy.

9 MR. CASSIDY: Q. Excellent. And I am
10 looking at the second half of that page where you talk
11 about amendments to the timber management plan.

12 MR. STRAIGHT: A. Yes.

13 Q. And I think your evidence there, and
14 if I can characterize it fairly, tell me if I'm not,
15 was dealing with making observations of local effects
16 through the area inspection report, et cetera, to
17 determine whether or not you then would want to make an
18 amendment to the timber management plan, and that is
19 your form of local effects monitoring.

20 Is that a fair characterization of your
21 evidence there?

22 A. Staff would be making observations of
23 potential effects, that's correct, during area
24 inspections.

25 Q. Right. Okay. And your evidence was:

1 "This may or may not require an amendment
2 to the timber management plan."

3 A. That's correct.

4 Q. And you went on to state that
5 districts in this way -- or should an amendment be
6 required, and I'm just going to paraphrase, the
7 district manager would use the amendment procedure that
8 we heard about in Panel 15 and then you state, and I'm
9 going to quote this:

10 "In this way, districts can respond to
11 new information and can adapt their local
12 practices to achieve better protection of
13 resource values."

14 A. Yes.

15 Q. And my question to you is: If you
16 have a study - and I may be putting it too high, it may
17 be simply an observation or an area inspection report
18 at the local level that suggests that a guideline can
19 be applied with less rigor and still achieve its
20 objective in the timber management plan - will the
21 district seek the appropriate amendment to a timber
22 management plan to reflect that new thinking?

23 A. In general you are right. The
24 districts can use local observations of potential
25 effects in a way that they can adjust prescriptions

1 locally, and probably one of the better examples is a
2 situation where, in terms of protecting tourism values
3 you find that in general repeated attempts to render a
4 road impassable after operations have completed that
5 those attempts are generally unsuccessful in thwarting
6 the attempts of recreationalists to gain access to the
7 lake, and you find that that, as a particular strategy
8 which you have applied using the tourism guidelines,
9 doesn't work.

10 Q. Right.

11 A. It may well be that the districts
12 would seek to either (a) amend that particular
13 prescription in the plan in which it exists to allow
14 some kind of mitigating action and, as a result of
15 that, you may also decide to change your strategy
16 generally in dealing with those kinds of situations.

17 Q. But to be fair, there could be
18 situations that arise where you thought you had a
19 problem at the local level or you thought you had a
20 value at the local level that required a certain level
21 of mitigative protection when you drafted your
22 five-year TMP, but then subsequent observation,
23 investigation, study, area inspection report reveals
24 that it may not be a problem and in fact you feel
25 certain it may not be a problem.

1 To be fair, would the district manager or
2 the district then take steps to amend the timber
3 management plan? Essentially what I'm asking you is,
4 surely that would work both ways; would it not?

5 A. Potentially it can work both ways
6 recognizing again the limitations of the observations
7 that are possible at the local level.

8 An example in the reverse situation you
9 described may be one of aesthetics, it may be one, for
10 example, where after working with certain types of
11 prescriptions to deal with aesthetic issues along
12 roadways that indeed the local stakeholders, the local
13 public involved find that the type of prescription that
14 was implied is more rigid than was required, then
15 certainly the districts as well could make adjustments
16 in that sense.

17 Q. Right. And if it was a prescription
18 in a TMP, you would then take steps to amend the TMP in
19 accordance with the amendment procedure that was
20 contemplated by your Panel 15?

21 A. That's correct.

22 Q. All right. So it does work both ways
23 then?

24 A. It could work both ways.

25 Q. All right. I suppose that is one

1 reason for having flexibility in the application and
2 consideration of the guidelines, to make sure they are
3 site-specific; is that correct?

4 A. That would be one.

5 Q. Among many reasons?

6 A. Right.

7 Q. Now, let's talk about changing the
8 guidelines, Dr. MacLean.

9 DR. MacLEAN: A. Yes.

10 Q. Or is it Mr. MacLean? Doctor?

11 A. Doctor.

12 Q. All right. And I want to take you to
13 your evidence and I think I found it in two different
14 places, but it's probably only necessary to refer to
15 one; however, those are found at Volume 156 and Volume
16 157 and the evidence I'm going to refer to - for your
17 notes, Members of the Board - is the evidence on
18 changing a guideline and that is Volume 156, page 27326
19 and 27448.

20 And I just want to flip to the last
21 reference because I think you simply repeated yourself,
22 no disrespect intended, however you stated on page
23 27448 Volume 157 that:

24 "At the local level--"

25 Do you have that in front of you?

1 A. Yes.

2 Q. "At the local level you will hear
3 from Mr. Straight about the
4 responsibility of the district managers
5 to adjust monitoring programs as we learn
6 what works and doesn't work..."

7 And then you state, and I quote:

8 "We might also want to change guidelines
9 or manuals to improve the way we manage
10 non-timber values."

11 A. Correct.

12 Q. And in fact you stated:

13 "The levels of uncertainties we have
14 about effects and effectiveness makes it
15 likely that we will want to make those
16 changes in the next several years."

17 And I want to simply follow up on what
18 Mr. Straight said and suggest to you in the provincial
19 context is it a likely or is it a possible scenario
20 that if your studies indicate - and by studies I mean
21 the effectiveness monitoring studies that you and Dr.
22 Euler have testified about - if your studies indicate
23 that a non-timber value objective can be met with a
24 less conservative approach in a guideline, will the
25 Ministry take the steps to change the guideline?

1 A. I think we tried to indicate with the
2 stringency approach that we discussed in the aquatic
3 effects program that we would look at the necessity for
4 the guidelines to be in place.

5 Q. Right.

6 A. And if they are not necessary to
7 protect the environment, and that is clearly indicated
8 by the research studies that we conduct, that we would
9 do so, that we would amend the guidelines if they are
10 not necessary.

11 Q. I see. So you might potentially do
12 away with the whole guideline if you found out that
13 none of it was necessary, but it's probably more likely
14 that there may be portions of the guidelines that you
15 may feel are unnecessary, and your evidence is that you
16 would then take steps to amend the guideline to reflect
17 the deletions that you would want to make; is that
18 correct?

19 A. That's correct.

20 Q. Okay. I then want to talk about the
21 timing of that. I think you gave evidence a few
22 minutes ago, Dr. Euler, that your MGEM study is going
23 to take approximately 10 years?

24 DR. EULER: A. That's to completion.

25 Q. Right. To complete, right.

1 A. That's right. We will probably learn
2 a great deal before the 10 years is up.

3 Q. Such that you might potentially make
4 decisions to amend the guidelines well before the 10
5 years is up?

6 A. Yes.

7 Q. And in fact I think you gave evidence
8 about that when you were talking about the timing on
9 November 9th, that is Volume 157, where you talked
10 about having outputs of the work - and this is at page
11 27427, Members of the Board - where you talk about
12 having outputs of the work throughout the course of the
13 study and that you might in fact have outputs as early
14 as late 1990?

15 A. Yes.

16 Q. And, therefore, it is possible, if
17 you felt that you had the sufficient data on which to
18 do it, that you might amend the guidelines at that
19 stage; is it not?

20 A. Certainly possible.

21 Q. All right. And, therefore, are you
22 saying that if that is possible that MNR would then go
23 ahead and do that, they would not wait until the year
24 2000?

25 A. Yes.

1 Q. Now, I suppose that one of the
2 important things that you want to do in your study, Dr.
3 Euler, is analyse which six gun is working best, which
4 achieves your objectives best - and I'm using your
5 language - of hunting management versus habitat
6 management, and that's a primary objective of your
7 studies is to decide that; right?

8 A. It's very important, yes.

9 Q. And in fact the reason you are doing
10 that is you want to decide which one is more effective
11 or how they should interact to achieve your goals, and
12 I am quoting you of:

13 "...managing habitat to influence how the
14 moose survive and their productivity."

15 A. Yes, that is one very important
16 objective.

17 Q. Right. And I, therefore, would like
18 you to tell me where in your study you are going to be
19 doing any sort of comparative analysis as to which one
20 is working in either a particular area or over the
21 province as a whole?

22 A. Let me just ask -- I will answer that
23 question, but I don't know quite what you mean by
24 'where in your study'.

25 Q. All right. Your Exhibit 920, your

1 MGEM study -- I will make sure I have the right exhibit
2 number here, it's 920.

3 A. Yes.

4 Q. You lay out your tasks of what you
5 are going to do.

6 A. Right, yes.

7 Q. And you have told me that deciding or
8 analysing whether your habitat six gun or your hunting
9 management six gun is working is a primary objective of
10 your effectiveness monitoring program.

11 A. Uh-huh.

12 Q. And I would like to know where in
13 that MGEM study you are going to do any sort of
14 comparative analysis to help you make that
15 determination as to which one is working?

16 A. If you will look on page 2, question
17 No. 4, that is how we -- that is the first reference to
18 hunting management, so that is a reference, page 2.

19 Then if you go to page 10 where we have
20 titled Task 4, Integration and Synthesis, see, this is
21 the phase of the study in which people will be taking
22 all of this information that we learn and integrating,
23 synthesizing and coming up with the best understanding
24 of how the six guns are working.

25 Q. All right. So you see it very much

1 as a task of the MGEM study to do that analysis that is
2 referred to at item No. 4 on page 2?

3 A. Yes.

4 Q. But it doesn't -- you will pardon me,
5 but it doesn't seem to appear directly as a task that
6 you then enumerate, or does it?

7 What I'm staying is, you have the tasks
8 then broken down on page 2 into four tasks--

9 A. Yes.

10 Q. --and I'm not clear as to where that
11 shows up as a clear direction to your study committee
12 that they will in fact do that comparative analysis?

13 A. Okay. Well, I take your point.

14 Q. All right. Inasmuch as you take my
15 point then, would you agree that it should be or it
16 would be beneficial to have a clear direction to your
17 study that that is a task that they have to complete
18 and, if possible, have done before 19 -- or I am sorry,
19 the year 2000?

20 A. Well, I'm just -- I didn't quite
21 follow what it is that you are asking me.

22 Q. Fair enough.

23 A. Would it be beneficial...?

24 Q. Fair enough. I'm asking you if it
25 would be beneficial to have as a direction in this

1 study, either by way of a term and condition from the
2 Board or by way of the Ministry amending this study, to
3 have a direction, a clear direction that there be a
4 comparative analysis done of habitat versus hunting
5 management, your two six guns--

6 A. Mm-hmm.

7 Q. --as a clear direction, as a clear
8 task rather than simply as a statement of need?

9 A. Well, sure that would be helpful.

10 Q. Fine.

11 A. If there is some confusion over that,
12 that should be cleared up and we were going to do it.

13 Q. Great.

14 A. So if it is helpful to have it as a
15 term or condition or something else, sure, no problem
16 at all.

17 Q. And you would have -- to the extent
18 that it's scientifically possible, you would have no
19 problem with the Board imposing a term and condition
20 that says: As soon as it is scientifically possible to
21 make that analysis; in other words, I wouldn't want you
22 to feel you have to wait until the year 2000 and
23 meanwhile we have gone five years with the wrong
24 approach if you can do it within five years?

25 A. Oh, yes. Sure, that would be fine.

1 That would be fine, not a problem.

2 Q. All right.

3 MR. CASSIDY: If I could just have the
4 Board's indulgence for a minute.

5 Q. I want to take you to page 428 of the
6 witness statement and I believe -- Exhibit 915. I
7 believe it's you, Dr. Euler, who I should address this
8 question to and--

9 DR. EULER: A. So can I have your
10 indulgence for a minute--

11 Q. Certainly.

12 A. --to make sure I have the right
13 things in front of me. Would you mind just telling me
14 again what those are?

15 Q. Sure. It's page 428 of the witness
16 statement for Panel 16, Exhibit 915.

17 A. Yes, I have page 428 here.

18 Q. All right. The very last couple of
19 sentences it states...

20 MR. CASSIDY: Does the Board have that?

21 THE CHAIRMAN: (nodding affirmatively)

22 MR. CASSIDY: Q. It states:

23 "OMNR also plans to report regularly on
24 the progress of the provincial effects
25 monitoring program."

1 It's the very last sentence. Do you have
2 any better -- can you give me any better grasp, Dr.
3 Euler, of what do you mean by regular?

4 MR. CASSIDY: Ms. Murphy is indicating
5 there may be an interrogatory that another party asked
6 in that regard that has been filed with the Board.

7 MS. MURPHY: I would just note that there
8 are interrogatories dealing with this matter and if you
9 will just give me a minute I will let you know where
10 they are.

11 MR. CASSIDY: All right, thank you.

12 Q. All right. Mr. Straight, I want to
13 come back to you and your discussion a minute ago about
14 what you said about the difficulties in doing a
15 socio-economic impact analysis of the loss of
16 merchantable timber due to a reserve, a buffer zone, an
17 AOC. You recall our discussion a few minutes ago, and
18 you indicated that there were certain difficulties, a
19 couple of which you indicated being costs and things of
20 that nature.

21 I would like to explore that with you
22 further in terms of what those difficulties are. I'm
23 still not clear on what those are that you have in mind
24 with doing a study of that nature.

25 MR. STRAIGHT: A. Well, I suppose you

1 have to define very clearly what you are talking about.
2 If you are talking about a social versus an economic
3 analysis or including both together, you are
4 significantly increasing the scope to begin with.

5 Q. Right.

6 A. There are some difficulties in terms
7 of determining what you would consider to be benchmark
8 conditions, for example, to conduct timber management
9 operations in the first place; in other words, what
10 exactly is the base that you are going to deal with.

11 If you are talking about reserves, for
12 example around lakes, one of the first questions you
13 have to ask yourself is: What is different as a result
14 of the guidelines over past practices.

15 At one point in MNR's history in dealing
16 with this issue there were donuts on a number of lakes,
17 that presents you with -- so now there are a new set of
18 guidelines and you have to define exactly how it is
19 that those guidelines are now going to be applied that
20 might make a difference in terms of economic impact.
21 That recognizing the variance of industry operations
22 across the area of the undertaking themselves does
23 not -- presents somewhat of a significant challenge to
24 begin with.

25 Q. And, in fact, a lot of those

1 challenges were encountered in the ESSA workshops in
2 trying to develop the impacts of timber management
3 activities on other values simply because there was a
4 diversity across the area of the undertaking; am I
5 correct?

6 A. That's certainly correct, yes.

7 Q. So you had that challenge in doing
8 those type of studies?

9 A. I'm not saying the challenge is
10 insurmountable, I am just saying that there is a
11 significant challenge involved.

12 Q. Sure. So it's a matter then of
13 having challenges that are not insurmountable, but a
14 matter of committing resources to doing those studies;
15 is that correct, Mr. Straight?

16 A. Probably would have to go somewhat
17 through a similiar kind of scoping to come up with a
18 reasonable socio-economic study that we did in terms of
19 developing the program for effects and effectiveness
20 monitoring of moose, tourism and fisheries values.

21 Q. The results of that scoping exercise,
22 to get yourself down to doing a manageable study, would
23 particularly be useful and relevant though to this
24 whole undertaking; would they not?

25 A. In general I would agree with you,

1 yes.

2 Q. It would be useful information to
3 have?

4 A. Yes.

5 Q. And, therefore, it's a matter of
6 committing resources to it in lines with the funding
7 estimates that we heard from Mr. Gordon; right?

8 A. That's correct.

9 Q. All right. I think it would be -- if
10 it's beneficial for the Board to have, do you think it
11 would be beneficial for there to be a term and
12 condition imposing that requirement on the Ministry?

13 MS. MURPHY: I'm sorry, I am just a
14 little bit lost, I was doing two things at once. Can
15 we just clarify what the requirement is that we are
16 talking about?

17 MR. CASSIDY: Well, I think Dr. -- I'm
18 sorry, Mr. Straight and I were talking about the
19 possibility of having a study done to assess the
20 effectiveness -- I'm sorry, the socio-economic impact
21 caused by the loss of merchantable timber that has been
22 caused by a reserve, buffer zone, AOC or something of
23 that nature.

24 Q. That is what we were talking about,
25 right, Dr. Euler -- or Mr. Straight?

1 MR. STRAIGHT: A. Well, thank you for
2 the compliment. Yes, that is what we were talking
3 about.

4 Q. And we were talking about designing a
5 study to do that. And I guess you and I are talking
6 about it in the overall context in relation to timber
7 management activities, and we were talking about it in
8 the context of that being a very broad task that would
9 have to be scoped.

10 If you had a specific area of concern or
11 AOC in a local area, would you agree with me that it
12 might be somewhat easier to address the socio-economic
13 impact if you were looking at it on that local level as
14 opposed to a provincial level?

15 A. It would be easier.

16 Q. All right. So...

17 THE CHAIRMAN: What's the purpose of
18 knowing the number? I take it you are looking for some
19 kind of, in economic terms, a number and in social
20 terms I guess things like loss of jobs, et cetera, if
21 in fact the area of concern and/or setting aside
22 reserve process was applied and, therefore, it was
23 deemed appropriate that those production areas be taken
24 out of merchantable production, period.

25 In other words, you get a number at the

1 end, but it's not going to affect the fact that those
2 areas should still be within areas of concern or should
3 still be designated reserves, et cetera; will it?

4 MR. CASSIDY: Well, with respect, that
5 may be putting the cart before the horse, Mr. Chairman.

6 The object is to establish that there is
7 an economic value and a social value to that
8 merchantable timber and, therefore, if you had the
9 study that analysed that that gave the Ministry when
10 they have to make those important decisions as to
11 whether or not an area of concern will be dealt with as
12 an area of concern or will be dealt with for its
13 socio-economic value in having that timber harvested,
14 the value is having a study so you can make that
15 determination better, rather than simply suggesting
16 that the area should be treated as an area of concern
17 without any real understanding of the socio-economic
18 impact of that.

19 THE CHAIRMAN: But presumably what
20 brought it into those areas in the first place; i.e.,
21 an AOC or a reserve, was the result of an analysis in
22 the timber management planning process that determined
23 that those areas should be protected?

24 MR. CASSIDY: Well, I think we heard
25 evidence, Mr. Chairman - and I don't want to put the

1 words in Mr. Straight's mouth - but we heard evidence
2 that studies of that nature are not done weighing the
3 pros and cons from a socio-economic perspective of an
4 AOC or in a provincial context the overall.

5 Q. Am I correct, Mr. Straight?

6 THE CHAIRMAN: Well, they may not be by
7 virtue of a study but certainly they are by virtue of
8 input from potentially affected parties such as tourist
9 operators, native peoples, et cetera.

10 MR. CASSIDY: Fair enough.

11 MS. MURPHY: And, by the way, the
12 industry--

13 MR. CASSIDY: Oh, fair enough.

14 MS. MURPHY: --are involved in that
15 timber management plan, in fairness.

16 MR. CASSIDY: I'm not talking about the
17 planning process, Mr. Chairman, I'm talking about the
18 effectiveness monitoring program.

19 We heard a lot of evidence in this panel,
20 which I'm trying desperately to stick to, which talks
21 about the studies that are going to be done, and it
22 occurs to me that this may be a useful area to explore
23 so that you do have more than simply local input, you
24 may have the need to have an overall study, as we have
25 seen for example with respect to moose, as we have seen

1 for example with respect to tourism.

2 MR. MARTEL: The ultimate intention then
3 is to determine whether in fact if you should cut the
4 area as opposed to leaving it as an area of concern and
5 the timber values outweigh -- the economic values, the
6 social values outweigh the area of concern; is that
7 what you are saying?

8 MR. CASSIDY: Measuring the pluses and
9 the negatives of that area, being an area of concern,
10 Mr. Martel, I think you have got my point, from the
11 perspective of the socio-economic impact.

12 And I appreciate your comment, Mr.
13 Chairman. I'm not talking about -- it may very well be
14 considered in terms of planning, but in terms of doing
15 a study to monitor the impacts in an overall context or
16 indeed in an individual local context, that may be a
17 different thing.

18 Q. Would you not agree, Mr. Straight?

19 MR. STRAIGHT: A. I am sorry, Mr.
20 Cassidy, I was thinking about -- you surprised me.

21 Q. That's fine.

22 MR. GORDON: A. Maybe I could be of some
23 assistance, Mr. Cassidy.

24 Q. Go ahead.

25 A. We are going to carry out some

1 studies and they may determine that there are some
2 changes needed to the guidelines, and very clearly MNR
3 is not going to change those guidelines without
4 involving the stakeholder committee as well involving
5 other parties who are not members of that stakeholder
6 committee.

7 Some of the changes that we propose may
8 have a significant impact on wood supply, and so
9 obviously as you go through the review process in
10 determining whether or not you will proceed with those
11 changes, that would be one of the things that you would
12 look at, the socio-economic impact of those changes.

13 As to whether or not we would commit to a
14 study right now, I don't think it's necessary to say we
15 would or would not, we would have to make that decision
16 when we see what changes are proposed, and also
17 obviously we recognize sometimes we will have to make
18 some changes that are necessary to protect certain
19 items even if there is a socio-economic impact.

20 So I understand your question, but I
21 would suggest perhaps it's the cart before the horse in
22 that when the changes are coming up for review, then at
23 that point in time, depending on the type of change you
24 are looking at, you would decide whether or not you
25 need to do further studies.

1 Q. So is it the Ministry's position then
2 that when they are considering these amendments to the
3 guidelines and if, for example, an amendment to the
4 guideline might require taking or might be perceived as
5 requiring or would have the effect of removing further
6 merchantable timber from opportunity for harvest, is it
7 the Ministry's position in that circumstance there
8 would be a socio-economic study done to address the
9 impact that might cause?

10 A. It will depend on the specifics of
11 the change being proposed. If because of science - and
12 someone else who is a scientist can help me out here -
13 but if because of science we feel it is necessary to
14 make this change to protect something, then it may not
15 be necessary to do a socio-economic study.

16 You may know that you have got to do
17 something to protect something, so then we are going to
18 change the guidelines to do that.

19 Q. Right.

20 A. Likewise there may be other
21 situations where perhaps you can consider a tradeoff
22 and, therefore, it may be appropriate to do this type
23 of analysis that you are talking about.

24 Q. Fine. But I'm simply suggesting, Mr.
25 Gordon, in the circumstances - and please restrict your

1 answer if you can to the circumstance where an
2 amendment to the guideline would result in a loss of
3 otherwise merchantable timber - and, in that
4 circumstance, can you perceive a situation in that
5 limited circumstance where you would not want to have a
6 socio-economic impact study of that effect?

7 A. I suppose if we find through one of
8 the studies that we are having, for example - we will
9 go right to the limit here - we are having a negative
10 effect on population of some species and, therefore, we
11 have the concern about the viability of, for example,
12 that species, we in all probability will not carry out
13 the socio-economic impact study relative to loss of
14 wood fiber if we feel that it's necessary to be more
15 stringent in reserving wood or reserving parts of the
16 forest protects viability of a certain species, but
17 it's hard for me to be specific, it will depend on the
18 situation.

19 Q. Right. But there is presently
20 nothing in terms of the terms and conditions that
21 speaks to even the possibility that you might do a
22 socio-economic study in those circumstances where you
23 might feel it's necessary?

24 THE CHAIRMAN: Well, the reason I raised
25 it, Mr. Cassidy, in the beginning is because, as I

1 understood it, you were requesting a condition be
2 imposed that these type of studies will be carried out.
3 And it seems to be a very site-specific type of
4 situation, not site-specific but individually focused
5 situation whereby you may or may not want to carry out
6 such a study depending on the reason why you are taking
7 out more merchantable timber; and presumably that is
8 because you want to protect something that is in need
9 of protection regardless of what the socio-economic
10 impact might be. And I think the example given by Mr.
11 Gordon is probably a good one in that respect.

12 MR. CASSIDY: Mm-hmm.

13 THE CHAIRMAN: I mean, what good is a
14 condition to say that at some stage of the game you may
15 consider carrying out this type of study as opposed to
16 requiring such studies to be carried out, you know,
17 within a certain time framework or something like that.
18 I mean, there is no sense cluttering up with conditions
19 that will have to be assessed individually at some
20 point.

21 MR. CASSIDY: I'm not sure I understand
22 that last comment, Mr. Chairman.

23 THE CHAIRMAN: Well, is it viable to
24 include as conditions of approval the possibility of
25 carrying out certain studies when they are not the type

1 of studies that you would want to have carried out at a
2 particular point in time or on a routine basis?

3 MR. CASSIDY: I think what I'm suggesting
4 is that you may be missing part of the equation. If
5 before you make that decision as to whether or not a
6 concern shall be treated in the area of concern
7 planning process, if you do not have some sort of
8 either local or general study depending on whether or
9 not you feel it can be done legally or whether it
10 requires a general study of that socio-economic impact
11 of doing just that; in other words, before you even get
12 to making the decision you are talking about, Mr.
13 Chairman, it may be appropriate to have a study of that
14 nature done, and in a local context obviously.

15 And it may very well be appropriate to
16 analyse it provincially, as they are proposing to do
17 with respect to some of the other effects. They are
18 proposing to study provincially the impact on wildlife,
19 they are proposing to study provincially the impact on
20 moose populations, and what I'm suggesting is, to the
21 extent that it is possible to study it provincially
22 with respect to the socio-economic impact of losses of
23 merchantable timber, that should be done; with respect
24 to the extent that it is possible to study it locally
25 before you make that tradeoff decision, that should be

1 done.

2 That is what I'm exploring with these
3 witnesses.

4 MS. MURPHY: Just a comment. My friend
5 is talking about missing one piece of the equation.
6 It's not my understanding - I don't believe the
7 evidence is - that the piece of the equation that these
8 witnesses are talking about with respect to these large
9 studies would in and of themselves reduce that side of
10 the equation to a dollar figure either.

11 So the argument that there is some piece
12 missing, I don't think there is much scrutiny when one
13 considers that the effects that these witnesses have
14 talked about with respect to the large studies, as I
15 understand it, wouldn't on a case-by-case basis give
16 you a number figure either, if you follow me.

17 MR. CASSIDY: All right. You are going
18 to hear more evidence about this, Mr. Chairman, and I
19 shall move on.

20 Q. I want to move on to you -- come back
21 to you though, Mr. Gordon, and moving into another area
22 in terms of your evidence in Panel 16, and this is a
23 rather technical matter.

24 However, it's on page 555 of your
25 evidence and you talk about - I believe this is your

1 evidence - you talk about -- do you have that in front
2 of you?

3 A. Page 555?

4 Q. Yes.

5 A. Yes, I've got it.

6 Q. The first full paragraph, the last
7 sentence:

8 "Experienced staff can visually assess
9 whether or not the maintenance activity
10 has been effective in reducing this
11 competition within a year after the
12 treatment."

13 And I just want to ask you about visual
14 assessment. Could that visual assessment in your view
15 be done aerially; i.e., by flying over the area?

16 A. Yes, it could.

17 Q. Thank you.

18 MR. CASSIDY: At this point, Mr.
19 Chairman, I want to file an interrogatory from Forests
20 for Tomorrow for Panel 16 and it is Interrogatory No.
21 7.

22 I have reviewed the interrogatory list
23 from those exhibits filed by the Ministry of Natural
24 Resources and it does not appear there, so I simply
25 want to file that at this point. (handed)

1 THE CHAIRMAN: That is 938, I believe.

2 ---EXHIBIT NO. 938: Forests for Tomorrow Interrogatory
3 No. 7 (Panel 16).

4 MR. CASSIDY: Q. And then I want to move
5 to you, Mr. Tworzyanski, and I reviewed your evidence
6 from Volume 156.

7 MR. CASSIDY: And for the Board's
8 reference it's page 27301.

9 Q. Do you have that in front of you?

10 MR. TWORZYANSKI: A. Not yet. I do.

11 Q. And you'll recall that you were giving
12 evidence there as to various forms of reporting and/or
13 monitoring of the FMA holders?

14 A. Yes.

15 Q. And when I use the word 'reporting',
16 I'm talking about essentially written reports or
17 materials that MNR receives or requires of FMA holders
18 which are public documents which a member of the public
19 could review if he or she wished, just so you are clear
20 on that.

21 And what I have done is taken that
22 evidence, and just for clarity purposes I have drafted
23 a document here which lists some of those ways in which
24 reporting is done by FMA holders and I have given you a
25 copy this morning.

1 MR. CASSIDY: I would like to pass it
2 around and we're going to talk about it and then enter
3 it as an exhibit, Mr. Chairman. (handed)

4 Q. And you have had a chance to look at
5 this list, Mr. Tworzyanski?

6 MR. TWORZYANSKI: A. Yes, I have.

7 Q. And would you agree with me that it
8 covers or contains reports that are provided to the
9 Ministry that come from FMA holders either annually or
10 every five years?

11 A. It does, yes.

12 Q. All right. And just looking at that
13 list, would you agree that it's possible for a member
14 of the public to have a look at any of those particular
15 documents?

16 A. Any of the documents on your list
17 would be available to the public to see.

18 MS. MURPHY: There may be some freedom of
19 information, as was mentioned yesterday, elements that
20 would have to be examined, but they are fairly
21 specific, as I understand it, Mr. Chairman.

22 MR. CASSIDY: Q. And, Mr. Tworzyanski,
23 is it the case then that if a member of the public
24 wanted to know what is going on on an FMA unit he could
25 look at any one or a combination of these documents and

1 have an idea?

2 MR. TWORZYANSKI: A. Yes.

3 Q. And I just want to go through them.

4 The normal timber management plan requirements in the
5 Timber Management Planning Manual would include all of
6 the normal reporting documentation that is contained in
7 the timber management plan prepared every five years?

8 A. Yes.

9 Q. Would you agree with that?

10 A. Yes.

11 Q. And the stocking assessments, I
12 believe you gave evidence on, is an additional
13 requirement to that that is not required of non-FMA
14 units but is required of FMA holders?

15 A. Yes, that's correct.

16 Q. All right. So that is a second - if
17 you will bear with me - that is a second document or a
18 second place of information that a member of the public
19 gets something about an FMA; correct?

20 A. An additional piece of information.

21 Q. Right.

22 A. Yes.

23 Q. And also I think you indicated that
24 NSR surveys are additional forms of information that
25 come from FMA holders that are not in the normal TMP?

1 A. Yes. On your list you have indicated
2 NSR surveys and that is an additional piece of
3 information in an FMA, and you have also indicated
4 Tables 6.4.1 and 6.4.2. Those particular tables are a
5 summary of operations done on NSR lands, just to
6 differentiate that.

7 Q. Okay. Thank you. And then you have,
8 in addition to that, a member of the public can look at
9 annual reports that are produced annually obviously on
10 FMA holders outlining what activities have occurred?

11 A. Yes. There is really two kinds of
12 annual reports, one set which is required by the Crown
13 Timber Act for FMA holders and the other annual reports
14 are really what is described in the Timber Management
15 Planning Manual, some of which we are touching on here,
16 which are all the sixth series reports.

17 Q. All right. The difference of course
18 between item No. 1 and item No. 4 in that respect is
19 that item No. 1 is prepared every five years, item No.
20 4 obviously is prepared annually; right?

21 A. That's correct, yes.

22 Q. And if a person wanted to find out
23 what was going on on a TMP he could look at an annual
24 work schedule which would outline what's -- or, I am
25 sorry, on an FMA, he could look at an annual work

1 schedule and find out what is happening that particular
2 year?

3 A. What is scheduled to happen, yes.

4 Q. Yes. And he would also have the
5 opportunity to look at a five-year, is it an audit or a
6 review, what's the --

7 A. They're called a five-year review.

8 Q. Okay. So he could look at a
9 five-year review and that would involve some analysis
10 of what has happened and in addition to simply
11 indicating what has happened, it would also analyse
12 that activity; is that correct?

13 A. It would have a certain level of
14 analysis in the review, yes.

15 Q. Okay. And then we have free to grow
16 surveys. In addition to all the previous six, we now
17 have free to grow surveys that are done on FMAs; is
18 that correct?

19 A. Yes, which are also one of the sixth
20 series tables as I mentioned.

21 Q. Right.

22 A. Just maybe for clarity, it's in the
23 Timber Management Planning Manual starting on page 141
24 and following that describes those particular types of
25 requirements and the following tables.

1 Q. Okay. And then we have what you gave
2 evidence on being invoice verification and field
3 sampling or contract administration. I think Mr. Cary
4 gave some evidence on that as well. That's another
5 whole set of files somewhere in an MNR district office
6 on an FMA unit; is that right?

7 A. Yes.

8 Q. So a member of the public could
9 review those files?

10 A. I believe so. I don't know if there
11 is anything relating to freedom of information.

12 Q. Subject to that?

13 A. Yeah.

14 Q. And that involves that field sampling
15 that you were talking about where that is done as part
16 and parcel of the invoice verification?

17 A. That's correct.

18 Q. And then we have Mr. Cary's new area
19 inspection report process, another form of information
20 available to a member of the public about an FMA
21 holder; is that correct?

22 A. Yes, that's correct.

23 Q. And then we have cut inspections
24 which I believe are under the Crown Timber Act which
25 are also public documents; is that correct, Mr.

1 Tworzyanski?

2 A. Yes, that's right.

3 Q. All right. Are there any that I have
4 missed?

5 A. Perhaps maybe the report of past
6 forest operations which is a timber management plan
7 requirement and we have already talked earlier in this
8 panel about Table 4.12.X, the reporting of compliance
9 in areas of concern. I think that would cover all of
10 it.

11 Q. And I suppose you have these
12 operational audits of your districts that substantial
13 evidence was given about earlier. They would include
14 districts that have FMAs in them; is that correct?

15 A. Yes, they would.

16 Q. And those operational audits then
17 would comment on what is happening on the FMAs to the
18 extent that the district office was involved in the
19 FMA?

20 A. The district and the region, yes.

21 Q. And in fact those audits sometimes
22 contain comments about what the district Crown rep
23 should do in respect of his particular FMA?

24 A. Yes.

25 Q. And what he would not do?

1 A. They could have comments to that
2 effect, yes.

3 Q. So that is another form of public
4 documentation about the FMA holder and, in that
5 context, how the Ministry interacts with the FMA
6 holder; correct?

7 A. Yes.

8 Q. So is it fair to say that there is at
9 present, and with Mr. Cary's proposal, what you
10 consider to be a substantial body of information
11 available about what is going on on an FMA?

12 A. In terms of the FMA's compliance with
13 their required conditions, yes.

14 Q. And in terms of what the FMA holders
15 actually do?

16 A. Yes, there is information to that
17 effect.

18 Q. A substantial amount of information;
19 is there not, with all of these various documents in
20 your view?

21 A. Yes, I would agree with that.

22 MS. MURPHY: And if I just might. I'm
23 not entirely certain, I hate to leave this here with
24 the impression that this is a complete list if it
25 indeed isn't, and I would like to discuss perhaps with

1 some of my clients here whether there should be other
2 things added to that list, just in the event that there
3 is something missing.

4 MR. CASSIDY: No objection whatsoever.

5 Perhaps we could have that entered as the
6 next exhibit, Mr. Chairman.

7 THE CHAIRMAN: Exhibit 939.

8 ---EXHIBIT NO. 939: Document prepared by OFIA
9 entitled: Current and Proposed
10 Reporting/Monitoring of FMA
11 Holders.

12 MR. CASSIDY: Q. Now, Mr. Cary, we'll
13 talk about some of these documents that are in Exhibit
14 939.

15 In terms of compliance monitoring, would
16 you agree with me that one could characterize a
17 stocking assessment on an FMA, free to grow survey on
18 an FMA, or an NSR survey on an FMA as a form of
19 performance assessment by the Ministry as to how the
20 FMA holder is doing in terms of meeting his timber
21 management objectives?

22 MR. CARY: A. Yes.

23 Q. All right. And that would I guess be
24 different from - and I appreciate Ms. Murphy's not
25 pleased to be using a new term, but if you can bear
with me -- a performance assessment assessing how a

1 person is performing might be different than an
2 assessment of compliance assessment?

3 A. Yes, they are different.

4 Q. All right.

5 MS. MURPHY: If I might, I know it's
6 often easy to tell when I'm not pleased, right now
7 though I would just point out that I am concerned that
8 the phrase NSR surveys which is a technical phrase
9 which has a technical meaning which was discussed in
10 Panel 4 may be causing some confusion.

11 NSR surveys, as you have heard again in
12 this panel, are surveys done before an FMA is signed.

13 MR. CASSIDY: Well, that's fine. Look,
14 if Ms. Murphy wants to deal with it in re-examination
15 she's welcome to, okay.

16 MS. MURPHY: That's fine, just so that we
17 aren't adding some confusion to what that particular
18 survey is.

19 MR. CASSIDY: No one is trying to add
20 confusion here, Mr. Chairman, and if she wants to deal
21 with it in re-examination, which is her opportunity to
22 clear up what she perceives as confusion, she's welcome
23 to.

24 Q. What I'm getting at is that there are
25 surveys; are there not, or reports kept of how FMA

1 holders are doing in regenerating NSR lands that were
2 the subject of them being identified at the time the
3 FMA was signed?

4 MR. CARY: A. That's correct.

5 Q. All right. And that is what you have
6 agreed with me is a performance assessment, they are
7 assessing how the FMA holder is performing?

8 A. Yes.

9 Q. Okay, thank you.

10 Now, Mr. Gordon, I want to talk to you
11 about stakeholder committees. Your evidence was given
12 at page -- I am sorry, Volume 156, page 27337, and I
13 just need some clarification, Mr. Gordon.

14 Is it the Ministry's position that the
15 decisions or recommendations of the stakeholder
16 committee will not be binding on the steering
17 committee?

18 MR. GORDON: A. That's correct.

19 Q. All right. And is it also the
20 Ministry's position that the decisions of the steering
21 committee will not be binding on the Deputy Minister?

22 A. That would be correct also.

23 Q. And it is the Deputy Minister who in
24 fact makes changes to the guidelines?

25 A. That is the system that we have put

1 in place and are putting in place.

2 Q. And, therefore, it is strictly a
3 recommendation process up to the Deputy Minister? The
4 stakeholder makes recommendations -- the stakeholder
5 committee makes recommendations to the steering
6 committee and the steering committee makes
7 recommendations to the Deputy Minister and he would
8 then determine whether or not guidelines should be
9 changed; is that correct?

10 A. In the final analysis, that's
11 correct, but I'm sure you recognize that in most cases
12 I would think that the recommendations will be followed
13 through.

14 Q. Right, from the steering committee to
15 the Deputy Minister?

16 A. Yes, and as well the steering
17 committee will be playing very close attention to what
18 the planning committee and stakeholder committees
19 advise.

20 Q. Right. But the steering committee
21 has more than just the stakeholder committee that it
22 gets information or recommendations from; is that
23 correct?

24 A. That's correct.

25 Q. And, therefore, it would not

1 automatically follow, or you would not be in the same
2 position with the Deputy Minister -- or as you are with
3 the Deputy Minister with the stakeholder committee
4 having its recommendations almost followed by rote by
5 the steering committee, that will probably not -- you
6 can't say that with any degree of certainty; can you?

7 A. No, I cannot say that.

8 Q. All right.

9 MR. CASSIDY: If I could just have your
10 indulgence, Mr. Chairman.

11 All right. Those are my questions, Mr.
12 Chairman, and Ms. Cronk has a few more.

13 THE CHAIRMAN: How long do you anticipate
14 you will be, Ms. Cronk?

15 MS. CRONK: I hope to be no more than
16 half an hour, sir, but it might be a bit more now.
17 Would you like to break now?

18 THE CHAIRMAN: I think we will go for
19 another half hour.

20 ---Discussion off the record

21 THE CHAIRMAN: All right. Why don't we
22 have a 10-minute break at this time, then we will come
23 back and complete your examination, then break for
24 lunch.

25 MS. CRONK: Thank you.

1 ---Recess taken at 11:40 a.m.

2 ---On resuming at 12:00 p.m.

3 THE CHAIRMAN: Thank you. Be seated,
4 please.

5 MS. CRONK: Thank you, sir.

6 CROSS-EXAMINATION BY MS. CRONK:

7 Q. Mr. Cary, ah, there you are. I'm
8 interested in certain of the evidence, Mr. Cary, that
9 you gave to the Board regarding operational audits, and
10 Mr. Tworzyanski, I'm interested in some of the evidence
11 that you have given regarding the monitoring, if you
12 will, of FMA holders in a number of respects.

13 But, Mr. Cary, perhaps I could start with
14 you. As I understood your evidence with respect to
15 operational audits, you described those as essentially
16 being a form of Ministry audits. I think the language
17 you used, roughly to paraphrase you, was the Ministry
18 looking at itself or one part of the Ministry looking
19 at another part of the Ministry. Is that an accurate
20 recitation of your evidence?

21 A. Yes, it is.

22 Q. There are, however, in addition other
23 forms of reviews and evaluations which you indicated
24 are conducted from time to time on various aspects of
25 the Ministry's timber management program; am I right in

1 that?

2 A. Yes.

3 Q. All right. And specifically, as I
4 recall your evidence-in-chief to the Board, you
5 provided a number of examples of those types of other
6 reviews and evaluations that are conducted from time to
7 time, and I would like to take you to that, Mr. Cary,
8 and if you need the transcript please tell me, but I
9 propose simply to read it to you. It's Volume 156 page
10 27288.

11 A. I will just get it in a moment.

12 Q. That would be fine. I'm looking at
13 the fourth line on that page, Mr. Cary, which reads --
14 this is a portion of an answer that you were giving to
15 Ms. Murphy as an introduction to your discussion of
16 operational audits and you indicated, commencing at
17 line 4:

18 "Now, other types of audits, other
19 reviews and other evaluations have been
20 and will continue to be conducted from
21 time to time on the timber management
22 program by external agencies, by
23 committees or individuals and you have
24 heard examples of some of these."
25 And you then went on to mention the Royal

1 Commission on the Northern Environment Report by
2 Commissioner Fahlgren, Dr. Baskerville's audit, the
3 Provincial Auditor's Report, and you indicated that
4 there were numerous other reports of this nature.

5 Those were examples, I take it, of the
6 types of reviews and evaluations that you had in mind
7 in indicating to the Board that there were a whole
8 series of other things that from time to time on an ad
9 hoc or otherwise basis are undertaken; is that correct?

10 A. That's correct.

11 Q. All right. Are you familiar, Mr.
12 Cary, with a review of the FMA program conducted by a
13 task force of Ministry, that is MNR representatives and
14 industry representatives undertaken in 1987 and 1988?

15 A. Yes, I am.

16 Q. It's my understanding that that
17 review resulted in a report by that task force on FMAs,
18 the report being dated October, 1988; am I correct in
19 that?

20 A. That's right.

21 Q. And are you familiar with that
22 report?

23 A. Not in any great detail.

24 Q. You have seen it?

25 A. Yes, I have.

1 Q. All right. Have you read it?

2 A. Some time ago.

3 Q. All right. And is that report, Mr.
4 Cary, another form of review or evaluation of the type
5 that you were describing to the Board as being
6 conducted from time to time on various aspects of the
7 Ministry's timber management program?

8 A. Yes, it is.

9 Q. All right. Mr. Tworzyanski, as I
10 recall the curriculum vitae that was marked in respect
11 of your experience, you have been in the past the FMA
12 coordinator; is that correct?

13 MR. TWORZYANSKI: A. Yes, it is.

14 Q. That was a position I understand that
15 you held from 1982 to 1986?

16 A. That's correct.

17 Q. And in the year immediately following
18 that, am I correct that you administered the activities
19 of the FMA program for the Ministry?

20 A. In the years following that.

21 Q. '86 to '88.

22 A. The FMA function was under my
23 direction, yes.

24 Q. Thank you. And are you familiar with
25 the task force report that I just mentioned to Mr.

1 Cary?

2 A. Yes, I have read it.

3 Q. Am I correct, Mr. Tworzyanski, that
4 that report, that is that task force review, while not
5 an operational audit of the type described by Mr. Cary
6 in his evidence, does represent a joint monitoring
7 effort, if you will, by both Ministry and industry
8 representatives of certain aspects of the FMA program?

9 A. Loosely speaking it could represent a
10 monitoring effort. It's a report of a group of
11 individuals involved with the FMA program and its
12 operational basis and makes some observations and
13 recommendations regarding the FMA program.

14 Q. All right. So that in that sense
15 would it be fair to describe it as really a
16 self-initiated cooperative review of that aspect of the
17 timber management program; the two parties involved
18 were looking specifically at that aspect of timber
19 management activities?

20 A. Yes, it would be a reasonable
21 statement, yes.

22 Q. All right.

23 MS. CRONK: Mr. Chairman, I would ask
24 that the report, subject to identification, be the next
25 exhibit. (handed)

1 THE CHAIRMAN: Very well. Exhibit 940.

2 ---EXHIBIT NO. 940: Document entitled: Report of the
3 Task Force on Forest Management
Agreements dated October, 1988.

4 MS. CRONK: Q. Mr. Tworzyanski, do you
5 have a copy of this report with you?

6 MR. TWORZYANSKI: A. No, I do not.

7 Q. Mr. Cary?

8 MR. CARY: A. No, I don't.

9 MS. CRONK: (handed)

10 MR. TWORZYANSKI: Thank you.

11 MR. CARY: Thank you.

12 MS. CRONK: Q. Mr. Cary, is that the
13 report that I described as being the October, 1988
14 report by the task force of MNR and industry
15 representatives on the FMA program?

16 MR. CARY: A. Yes, this is the report.

17 MS. CRONK: I am sorry, sir, what was the
18 exhibit number that you assigned?

19 THE CHAIRMAN: 940.

20 MS. CRONK: Thank you.

21 Q. Perhaps, Mr. Tworzyanski, I should
22 direct my questions to you with respect to this
23 document. I don't propose to deal with it at any
24 length today, but for the purposes of assisting the
25 Board in understanding how the report is structured and

1 what the function of this task force was, perhaps we
2 could just deal with some preliminaries first, if we
3 might.

4 As I understand it, the purpose of the
5 task force was to identify problems and make
6 recommendations regarding the FMA program and the
7 administration of FMAs; am I right in that?

8 MR. TWORZYANSKI: A. Yes.

9 Q. All right. And the composition of
10 the task force, as I understand it, was essentially
11 five persons; two from within the MNR and three from
12 among the FMA holders; is that correct?

13 A. Yes, it is.

14 Q. The task force heard, during the
15 course of its work, submissions and received input from
16 a large number of companies and a large number of MNR
17 districts or regions; am I right in that?

18 A. Yes, you are correct.

19 Q. All right. And as I understand it,
20 specifically the purpose of the report was to look
21 quite specifically at what those involved in the FMA
22 program perceived to be problems with its functional
23 working and to identify solutions as to how the program
24 might be improved; am I right in that?

25 A. Yes, you are correct.

1 MS. MURPHY: Mr. Chairman, if I just
2 might comment -- a question of clarification really,
3 and as I understand - it's my understanding - this
4 report, that it has been characterized properly as the
5 review of the FMA program on an operational basis, and
6 I believe the witnesses have agreed with that.

7 Just to clarify for the future, I'm
8 afraid I'm not certain I even have the current
9 regulation, but just to bring to your attention, the
10 regulation under the Environmental Assessment Act, I
11 believe it's still Regulation 293, has a section -
12 unfortunately my copy of the Environmental Assessment
13 Act doesn't have the consolidation - but I just wanted
14 to bring to your attention what I believe is still
15 Section 10 of that regulation.

16 I will just read it to you and I will
17 undertake to ensure that it still is Section 10. I'm
18 concerned that my copy of the regulation that I have
19 with me might be out of date, but I'm certain that this
20 section is still there, I'm just not certain whether
21 it's now Section 10 or Section 9.

22 THE CHAIRMAN: Right. What is the
23 regulation?

24 MS. MURPHY: What it says is:

25 "The undertaking of making a loan, giving

1 a grant, giving a guarantee of debts or
2 issuing or granting a licence, permit,
3 approval, permission or consent is exempt
4 from the provisions of subsection 5(1) of
5 the Act."

6 Now, as I understand -- there is also,
7 Mr. Chairman - and, again, I would undertake to locate
8 that for you and provide it to you - there was from the
9 Ministry of the Environment at the time that section
10 was promulgated a description of the purpose of that
11 section and, as I understand it, the idea is that the
12 issuing of a licence, and I would suggest in this case
13 the administrative running of a program, is not subject
14 to environmental assessment.

15 Instead, as I understand the description
16 from the Ministry of the Environment, the intention is
17 to make the undertaking itself the subject of the
18 environmental assessment, and then once the undertaking
19 has been subject to an environmental assessment, then
20 licences subsequently issued would have to comply with
21 the terms and conditions.

22 THE CHAIRMAN: Well, in essence the Class
23 EA approach; is that not correct?

24 MS. MURPHY: I think that's the idea. So
25 just - I don't know whether we are looking at going in

1 that direction, I would just raise at this point that
2 it's our view that it's not really appropriate to be
3 looking at technical workings of this or any other
4 licensing program. It may be in fact that there are
5 some other issues that you wish to address.

6 THE CHAIRMAN: Well, you are not
7 suggesting; are you, that the FMA program itself was
8 ever the subject of an environmental assessment?

9 MS. MURPHY: No, Mr. Chairman, I don't
10 believe it is, I think that's correct. I don't believe
11 it is here either.

12 THE CHAIRMAN: Okay. But the basis of
13 your objection is, is that we should not be looking at
14 this because it is not subject to the Environmental
15 Assessment Act?

16 MS. MURPHY: Well, I don't know at this
17 point whether I am making an objection, I'm not certain
18 exactly where we are going. I just wanted to raise
19 that. As I understand it, operational aspects of any
20 of these programs, you don't have the evidence before
21 you, I would suggest, to deal with it in that broad
22 level.

23 MS. CRONK: I may be able to help, sir.
24 I'm familiar with the section of the regulation that
25 Ms. Murphy quoted.

1 It is not my intention to deal with the
2 administration in any way in questioning or to suggest
3 to you that it's even appropriate in this hearing to
4 get into the administration of this program.

5 The purpose in introducing the report is
6 that it's clearly the type of report that contains
7 information that is relevant to some of the issues that
8 are before you, and my questions will be directed to
9 some of the observations and conclusions reached in the
10 report relating to specific timber management
11 activities, not the administration of the program per
12 se or the licensing issues per se.

13 THE CHAIRMAN: Well, surely the extent to
14 which any of the activities which are included within
15 this Class Environmental Assessment apply to FMA
16 programs is relevant to this hearing, regardless of
17 whether there is an overlap or not.

18 MS. CRONK: I agree with that, sir. I'm
19 not going to -- I'm saying I agree with Ms. Murphy that
20 licensing per se is not an appropriate matter to be
21 raised, but the conclusions in this report dealing with
22 timber management activities that are before you are
23 relevant and it is to those that my questions will be
24 directed.

25 I don't know if that resolves my friend's

1 concern or not.

2 MS. MURPHY: I was just raising it. As I
3 say, I don't have an objection at this point in time, I
4 thought it would be wise to raise that at this time.

5 THE CHAIRMAN: Well, let's just clarify
6 something, just so the Board knows where it's going.

7 Are you putting forth the proposition to
8 the Board that setting aside existing licences and
9 anything this Board might do which may have a
10 retroactive effect, are you suggesting that this Board
11 under this Class EA does not have the jurisdiction to
12 indicate in the future the way in which certain
13 activities which will necessarily form part of future
14 FMA agreements cannot be specified by this Board for
15 licences which are yet to be issued in the future, for
16 agreements which are yet to be signed even in the
17 future?

18 MS. MURPHY: I would suggest that it
19 might be a little difficult to interpret this
20 limitation on the Board's jurisdiction although it's
21 clearly there in the regulation.

22 I would suggest that there are certainly
23 a great number of subject matters of substance that
24 this Board will be making decisions about which will
25 affect what happens subsequently in any licensing, it

1 isn't simply just FMAs of course, there are a number of
2 other licensing schemes.

3 So I just thought at this stage it would
4 be wise to raise that. I don't suggest for one minute
5 that your terms and conditions would have no effect in
6 future, in fact I believe we raised yesterday the
7 section that specifically deals with that.

8 I would suggest you would have to read
9 that regulation and the other licensing sections
10 together with Section 16 which we discussed yesterday
11 or last day I think for a minute, that was the section
12 that deals with the effect of an approval and that was
13 the section that said no person shall proceed with an
14 undertaking contrary to terms and conditions, and it
15 goes on to say then, I would suggest mirroring the
16 language of the regulation, that:

17 "No person shall give, make, issue,
18 interpret or apply any licence,
19 permit..."

20 And so forth, that is contrary to any
21 term and condition imposed by the Minister or by the
22 Board, I would suggest.

23 So I'm just raising it. I think you are
24 going to have to interpret what that means based on the
25 facts that are put before you. I would suggest if the

1 Board were going to look in great detail at the
2 administration of various licensing schemes, there is
3 probably a great deal of evidence about that that is
4 not before you.

5 THE CHAIRMAN: Well, I'm not suggesting
6 we are going to look at the licensing schemes
7 themselves as opposed to what the environmental impacts
8 of some of the activities which would be covered by the
9 licences involve.

10 All right. Let's move on to where we're
11 going.

12 MS. CRONK: Thank you, Mr. Chairman.

13 Q. Mr. Tworzyanski, again just for the
14 purposes of assisting the Board in terms of the
15 structure of this task force report, to deal with a few
16 more preliminaries.

17 Am I right that the task force committee
18 dealt specifically with the extent of the FMA program
19 and made some observations about it in the introduction
20 to the report. In the introductory pages they talked
21 about how large the program was in terms of the
22 province as a whole; did they not?

23 MR. TWORZYANSKI: A. Yes, that's
24 correct.

25 Q. All right. And could I ask you to go

1 to page 6 and I understand this to be a map showing the
2 management units being managed in the province by FMA
3 holders as at June of 1987; is that your understanding?

4 A. Yes, it is.

5 Q. And all of them as depicted in this
6 map are in the area of the undertaking; am I right in
7 that?

8 A. That's correct.

9 Q. All right. And that's as at June,
10 1987, and the Board has heard evidence from other
11 Ministry witnesses about the geographical extent of the
12 area involved. Can you tell us, if you know, how many
13 new FMAs have been signed since then?

14 A. I don't believe any have been signed
15 since that time. There were 30 FMAs at the time of
16 writing of this report, there are still that number;
17 exclusive of the number of amalgamations, they are
18 still the same area.

19 Q. All right. The same geographical
20 area and the same number of FMA?

21 A. Same geographic areas, there are two
22 less FMAs that have been amalgamated -- there has been
23 some amalgamations gone on. The geographic extent is
24 the same, the ownership is the same.

25 Q. I see. Thank you. And then on the

1 immediate next page there is a series of figures, 1
2 through 4, which deal with certain timber management
3 activities; namely, harvesting, regeneration, tending
4 and site preparation all on Crown lands.

5 And these, as I understand it, depict the
6 increase in silvicultural activities which has occurred
7 since introduction of the FMA program and, further, the
8 extent to which those increases have been achieved by
9 FMA holders. Am I reading the figures correctly?

10 A. Yes, you are.

11 Q. All right. They indicate just at a
12 quick glance at the figures; do they not, a very
13 substantial increase in tending and regeneration since
14 introduction or initiation of the FMA program?

15 A. Yes, they do show increases in those
16 activities.

17 Q. All right. And if we look at the
18 bottom of page 9, Mr. Tworzyanski, do we see there --

19 THE CHAIRMAN: Isn't that, Ms. Cronk,
20 though largely as a result of the Crown taking over
21 some of those activities?

22 MS. CRONK: Or the Crown surrendering
23 responsibility for them.

24 THE CHAIRMAN: That's right.

25 MS. CRONK: You will recall, sir, and the

1 reason I'm treating this in a preliminary fashion, is
2 there was evidence on this very issue in Panel 11 and
3 the issue of whether it was simply a transfer of
4 responsibility that accounted for the increase was the
5 subject of evidence at that time. I've simply asked
6 for confirmation that those are the statistical results
7 and the reasons for that is before you from other
8 witnesses. Is that responsive...?

9 THE CHAIRMAN: Yes.

10 MR. TWORZYANSKI: Just to clear up that
11 those graphs do show both the activities on Crown land
12 and on FMAs both.

13 MS. CRONK: Q. And when I suggested to
14 you that they did two things: First, that they showed
15 the extent of silvicultural activities undertaken since
16 inception of the FMA program; and, secondly, the extent
17 to which the levels of achievement had been achieved by
18 FMA holders; that comparison is there?

19 MR. TWORZYANSKI: A. Yes, it is.

20 Q. All right, thank you. And looking at
21 the bottom of page 9, if we could, do we find there a
22 description essentially of what the task force was all
23 about and what the contributors to the work of the task
24 force were asked to do?

25 I'm looking at the first full paragraph

1 under Section 3 entitled: Problems and Solutions.

2 A. Just let me read it.

3 Q. That is fine, sir.

4 A. Yes, that's a description of what the
5 various participants or people being interviewed were
6 asked to do and then what happened.

7 Q. All right. And specifically what
8 they were asked to do was to present a list of problems
9 that they perceived or had in fact experienced with the
10 program along with any solutions that they might have
11 to offer?

12 A. Yes, that's correct.

13 Q. All right. Now, without going
14 through the balance of the report in any detail, am I
15 correct that as a result of the responses that the task
16 force received from various MNR districts and regions
17 and industry representatives, a number of identified
18 problems were described as being major and a number as
19 being secondary in nature?

20 A. Yes, I recall that that division was
21 made.

22 Q. All right. And one of the problems
23 identified I suggest by the task force as being a major
24 problem related to what they called the nursery stock
25 cap. Are you familiar with what is meant by that term,

1 Mr. Tworzyanski?

2 A. I'm familiar with the term, yes.

3 Q. All right. Am I correct that it
4 refers to a province-wide cap on nursery stock
5 production?

6 A. Yes, it does.

7 Q. And what is the cap and when was it
8 introduced?

9 A. Perhaps Mr. Cary could respond to
10 that specifically.

11 Q. That's fine. Mr. Cary? What is the
12 cap and when was it introduced?

13 MR. CARY: A. The cap was introduced as
14 a result of discussions in 1985 effective 1987 and it
15 was in response to a concern --

16 Q. Well, first maybe you can tell us
17 what it is.

18 A. Okay. The forest management program
19 in the Ministry of Natural Resources were subject to
20 some funding constraints and we had to take a cold hard
21 look at the expenditures in the timber management
22 program.

23 The program at that juncture was being
24 driven by a very expensive regeneration technique;
25 namely, planting. I think Panel 11 also alluded to

1 this. The process of planting includes of course stock
2 production, site preparation and then planting the
3 trees.

4 Q. Mr. Cary, I am sorry to interrupt
5 you, and by all means I will invite you to complete
6 your answer, but can I just have a clear expression
7 first of what the cap is, and perhaps I can help you
8 and you can tell me if I'm right or wrong?

9 A. What we did was to limit the
10 production of nursery stock, both bareroot and
11 container stock, in the provincial nurseries and the
12 private grower facilities with respect to stock.

13 Q. And when did that first occur?

14 A. '87, if I remember correctly.

15 Q. All right. And was the limit
16 quantified?

17 A. Yes, there were certain ceilings that
18 were in place.

19 Q. And can you help us as to what the
20 ceilings were when first introduced?

21 A. From my recollection, about
22 160-million seedlings per year.

23 Q. Was that for the entire province or
24 for the area of the undertaking?

25 A. The entire province.

1 Q. And did that ceiling continue in
2 1988?

3 A. Yes, it did, and I don't know if it
4 shifted from that 160, it may have risen fractionally.
5 I would have to collect that information.

6 Q. All right. Well, perhaps you can
7 make enquiries and let me know in due course whether
8 the quantification of the maximum was different in 1988
9 and, if so, what it was?

10 A. Yes, I will.

11 Q. And similarly, was that limitation,
12 that maximum cap in place and is it in place in 1989?

13 A. Yes, it is.

14 Q. And what is the number please in
15 1989, or do you know?

16 A. It's about 163- or 165-million, it's
17 in that range.

18 Q. All right.

19 A. I will undertake to find out exactly.

20 Q. Thank you. And the cap then, as I
21 understand it, of that limit was essentially directed
22 to production of nursery stock both bareroot stock and
23 seedlings; am I right?

24 A. Bareroot stock and containers.

25 Q. Sorry, that's right. And it was

1 essentially; was it not, a response as you were
2 suggesting a few moments ago to funding constraints
3 being experienced by the MNR with respect to the
4 regeneration program generally?

5 A. By MNR--

6 Q. Yes.

7 A. --for all its programs.

8 Q. Yes.

9 A. And of course timber management is
10 one of its programs.

11 Q. All right. And, Mr. Tworzyanski, if
12 I could address the next question to you. Am I correct
13 that one of the results of the cap has been that in
14 some areas where the preferred silvicultural option has
15 been to plant, it has not been possible to fully
16 implement the preferred planting option to the extent
17 that might have been proposed?

18 MR. TWORZYANSKI: A. Yes, you are
19 correct, it would have been impossible to implement the
20 preferred action if that were planting.

21 Q. All right. And in some situations
22 then where planting was the preferred silvicultural
23 option, it was not possible to plant as many trees as
24 was proposed?

25 A. I'm sorry, if you are saying that was

1 it possible to plant areas which required planting, and
2 I answered no to that. I don't believe in any case
3 would a lesser amount of trees be planted on a unit
4 area.

5 Q. All right, let me back up then.
6 First of all, to be fair, the consequence of the cap
7 did not mean that areas were left untreated; are we
8 agreed on that?

9 A. Yes, we are.

10 Q. All right. But in some situations
11 planting would have been the preferred treatment?

12 A. Yes.

13 Q. Am I right?

14 A. Yes.

15 Q. And to the extent that nursery stock
16 production was limited, which is what the cap I have
17 heard is all about, in some areas the consequence was
18 that insufficient stock was available to plant to the
19 extent that might have been proposed?

20 A. Yes, that's correct.

21 Q. All right. And if I could direct you
22 to the bottom of page 12 of the task force report where
23 the cap is discussed, at the bottom of page 12 and at
24 the top of page 13 - this numbering system always
25 reminds me of the Tax Act, Mr. Tworzyanski, but that's

1 my problem and no one else's - but it's 3.1.1.2 and
2 that is where the discussion of the nursery stock cap
3 begins.

4 And do you have that, sir, that page 12?

5 A. Yes, I do.

6 Q. And beginning in the last paragraph
7 on that page, the task force members record as follows:

8 "The cap on stock production was placed
9 there by MNR in an effort to bring the
10 ministry's ratio of planting and other
11 treatments into a better balance. At one
12 point, the regeneration program seemed to
13 be driven by a mushrooming production of
14 container stock. The distribution of the
15 stock shortfall is, however, like the
16 distribution of the shortfall in roads
17 dollars: an administrative exercise with
18 little attention given to future wood
19 demand or matching the correct treatments
20 to the available sites."

21 Then the task force goes on to make a
22 recommendation and it's to that that I direct your
23 attention specifically, Mr. Tworzyanski; it is,
24 the recommendation is No. 2 and it reads:

25 "That the Ministry of Natural Resources

1 re-examine the rationale for the cap on
2 stock production."

3 Now, stopping there for a moment. Do you
4 agree, Mr. Tworzyanski, based on your knowledge of FMA
5 activities given your past role, that the rationale for
6 this nursery stock production cap should be
7 re-examined?

8 MR. TWORZYANSKI: A. The stock cap
9 should be looked at again in the perspective of total
10 available funding and if more funding were available to
11 the Ministry, then the stock cap should definitely be
12 looked at and not just in terms of the FMA program but
13 in terms of the overall planting program of the
14 Ministry on all Crown lands.

15 Q. All right. Without restricting it to
16 the FMA program, do I understand your answer to be then
17 that the rationale should be re-examined in the context
18 of available funding generally?

19 A. Yes, it should.

20 Q. All right. And the task force goes
21 on to suggest in the next paragraph that the:

22 "...re-examination of the cap must be
23 done in conjunction with the
24 re-examination of the forest production
25 policy."

1 Do you agree with that, sir?

2 A. Yes, I do.

3 Q. Would you agree with me, Mr.

4 Tworzyanski, that introduction -- or perhaps I could
5 put it this way, stock production depends; does it not,
6 on government funding being available to support this
7 aspect of the Ministry's timber management activities?

8 A. At the present time, yes.

9 Q. That has certainly been the case in
10 the past?

11 A. It has.

12 Q. All right. And are you aware, Mr.
13 Tworzyanski, that the evidence before this Board
14 indicates that the demands for nursery stock will
15 continue to rise over the next five years but that the
16 demand will exceed production significantly. Are you
17 familiar with that evidence?

18 A. I'm familiar with the phrase, I'm not
19 sure where it is in the evidence.

20 Q. All right. Well, to be fair to you,
21 there was evidence given on Panel 11 by Mr. Waito and
22 others before the Board specifically relating to
23 forecast stock production numbers both in terms of
24 anticipated demand and in terms of anticipated
25 production, and that evidence was that demands will

1 continue to increase over the next five years, that
2 being the time period in which the evidence was given,
3 and that the production response, if you will, to that
4 demand would be significantly less -- the production
5 would be significantly less than the projected demand.
6 Are you aware of that evidence?

7 A. I'm aware of, again, the content of
8 what you are saying. I haven't read it in the evidence
9 but I'm aware and I agree with what you're saying.

10 Q. All right. Would you agree with me
11 given that situation that there is an immediate need
12 for re-examination of any continued cap or ceiling on
13 nursery stock production as it may affect renewal
14 activities in the area of the undertaking?

15 A. There is a need for examination. As
16 to whether immediate or whether as part of the forest
17 production policy, I would say it should be done as
18 part of the forest production policy review currently
19 underway.

20 Q. All right.

21 A. The impacts of a shortfall in nursery
22 stock, if there are any, would not be felt for a
23 reasonable period of time. They can be made up over
24 time also, so that I don't think the immediacy, like
25 this year, is essential but over the next two or three

1 years, yes, it should definitely be reviewed.

2 Q. All right. Well, maybe perhaps we
3 could just explore that for a moment. We are agreed
4 that the re-examination of it, an examination of the
5 consequences of it should be undertaken with respect to
6 re-examination of the forest production policy. We
7 have agreed, I think, so far together on that?

8 A. Yeah, I believe the two would go
9 hand-in-hand, yes.

10 Q. All right. My next suggestion to you
11 was then, given the evidence with respect to demand and
12 production regarding nursery stock that this Board has
13 heard, that there is an immediate need to take a look
14 at and to re-examine that cap.

15 And do I understand you to be saying that
16 you don't regard the need as immediate but within the
17 next two or three years. Is that what I heard you to
18 say?

19 A. In the forestry sense I would say
20 immediate to be within the next few years. Based on
21 you're looking at 70-100 year rotations, the next two
22 years is a reasonably immediate time frame to look at
23 something and take action.

24 Q. Would you feel any differently about
25 the need to do it immediately; that is, looking at it

1 now, 1989-1990, if the evidence before this Board was
2 that the demand for nursery stock in 1989-1990 was
3 going to be approximately 30-million plus more than the
4 anticipated production of stock 1989-1990?

5 A. Again, there are two ways to get
6 seedling stock; one is through the container program
7 which is a much shorter time frame to produce it, the
8 other is through the nursery or the bareroot program
9 which that stock is already in the ground and has been
10 for a number of years.

11 So some small shortfalls could be made
12 up, for example, through container stock and, again, in
13 terms of available funding, if there were a major need
14 described for next year and funding was not available,
15 it wouldn't make much sense to try and grow that stock.

16 Q. All right. I take your point. Then
17 looking at the period 1989 through to 1990-1991, can we
18 agree that in that time frame, given what we know about
19 anticipated demand and anticipated stock production,
20 it's important that the review begin and be carried out
21 in that time period?

22 A. Yes, I would agree with that.

23 Q. All right. And certainly in terms of
24 planning for the future, you would agree that it never
25 hurts to start sooner rather than later?

1 A. No, that is a reasonable statement.

2 Q. All right. Then can I take you then
3 to the suggestion again that maybe it is important that
4 it begin as soon as possible, re-examination of the cap
5 should begin as soon as possible?

6 A. Again, I'm going to stand on the time
7 frames that I described, within the next two years,
8 yes.

9 Q. All right. And taking a look then
10 at --

11 MR. MARTEL: Can I ask a question?

12 MS. CRONK: Yes, sir.

13 MR. MARTEL: When is the forest
14 production policy, the new one that is being worked on,
15 when is that going to be ready? If you say that this
16 program should be in conjunction with that, then it was
17 my understanding there was a possibility that that
18 would be presented to us before this hearing got its
19 extra two and a half years' life not long ago.

20 MR. CARY: Mr. Martel, I think I
21 indicated back in Panel 4 that Phase I of the review of
22 the forest production policy would take a minimum of a
23 year and indeed it has taken more than a year. We hope
24 to have the Phase I background papers complete by the
25 end of this calendar year and they will go out for

1 public comment.

2 Phase II, where you get down into
3 figuring how much stock management unit by management
4 unit you need will take another perhaps two years after
5 that. I can't tell you exactly when the Phase II will
6 be completed, but we should -- it should be complete in
7 another two years.

8 MR. MARTEL: Which would then tie in I
9 think almost with the immediacy that Ms. Cronk is
10 talking about and the answer that Mr. Tworzyanski is
11 giving when he talks in terms of 1990-91.

12 MR. CARY: That might fit, yes.

13 MR. MARTEL: I'm not sure there is very
14 much difference between what we're saying.

15 MS. CRONK: Thank you, sir.

16 Q. Could I ask you --

17 MR. LINDGREN: Mr. Chairman, sorry to
18 interrupt, but just following from what Mr. Cary said,
19 his evidence suggested that the few FPPO will be
20 available in the new calendar year. Are we going to
21 see it in this hearing and will we have an opportunity
22 to cross-examine upon it?

23 MR. CARY: No.

24 MS. CRONK: Well, excuse me, sir. I may
25 have lost track of what is going on here, but I thought

1 I was in the middle of a cross-examination, not to be
2 small about it.

3 THE CHAIRMAN: We will deal with that at
4 some other point, Mr. Lindgren.

5 MR. LINDGREN: Thank you.

6 THE CHAIRMAN: I think to interrupt Ms.
7 Cronk's cross-examination with that kind of question is
8 inappropriate.

9 MS. CRONK: In fairness, sir, I don't
10 mean to -- I suppose reacting both honestly and quickly
11 to the situation, I'm interested in the answer to the
12 question too, but that's not what I understood the
13 witness to say, and I will be dealing with it. So Mr.
14 Lindgren perhaps can follow up on it when its his turn
15 to reach cross-examination.

16 Q. Mr. Tworzyanski, could I ask you to
17 look then, if you would please, at the further
18 observation made about this issue by the task force
19 report in the first full paragraph after recommendation
20 No. 2 on page 13.

21 We have already reviewed part of that.
22 The task force suggested that re-examination of the cap
23 must include industry participation and, further that:

24 "If the outcome of this re-examination
25 indicates higher stock levels are in

1 order, then funding must flow
2 accordingly, both to stock production and
3 to associated areas of silviculture."

4 Do you see that?

5 MR. TWORZYANSKI: A. Yes, I do.

6 Q. All right. That was the conclusion
7 expressed by the task force committee?

8 A. Yes, it was.

9 Q. All right. And do you agree with
10 that, sir?

11 A. Yes, absolutely.

12 Q. All right. And could I ask you now
13 to go to page 37 where this issue of the forest
14 production policy and the role that it has to play are
15 discussed. And do you see there the section entitled:
16 The Importance of Government Policy on Forestry
17 Activities?

18 A. Yes, I have that.

19 Q. All right. The last paragraph on
20 page 37, Mr. Tworzyanski, indicates as follows:

21 "One example of the importance of
22 government policy to levels of forest
23 management activity is the Cabinet
24 adoption of a forest production policy in
25 1972. This policy was a quantified

1 statement of wood production objectives
2 complete with an implementation schedule
3 detailing how the objectives would be
4 attained and providing both funds and
5 output targets for the various
6 silvicultural activities."

7 Stopping there for a moment. You are
8 aware of course that the Board has received both in
9 Panel 4 to which Mr. Cary alluded and in other
10 evidence, evidence about the 1972 forest production
11 policy?

12 A. Yes, I'm aware of that.

13 Q. And continuing on commenting about
14 that policy the task force committee indicates:

15 "The forest production policy was an
16 extremely effective mechanism within
17 government for ensuring a continuity of
18 commitment and funding and it resulted in
19 a gradual increase in both MNR staff and
20 funding levels. The results can be seen
21 in the increase in silvicultural activity
22 which occurred from 1972 to 1988."

23 Now, stopping there for a moment. Mr.
24 Tworzyanski, do you agree that the 1972 forest
25 production policy was, as is suggested by the task

1 force committee, an effective mechanism within
2 government for ensuring continuity of both commitment
3 and funding to the objects and tasks outlined in that
4 document?

5 A. Yes, it certainly did assist in that.

6 Q. All right. And do you agree as well
7 that the results of that type of a mechanism for
8 funding and commitment can be seen, as suggested by the
9 task force report, in the extent of silvicultural
10 activity which occurred from 19 -- after 1972?

11 A. Yes, those results are displayed on
12 the top of page 38.

13 Q. And if we look over to Table 1 on the
14 next page, that deals with levels of silvicultural
15 activity in Ontario. And you will see two columns,
16 1972 and 1980. And looking at this table I have
17 understood it to reflect the extent to which
18 silvicultural activity increased following introduction
19 of the forest production policy in 1972. Am I reading
20 that correctly?

21 A. Yes, you are.

22 Q. All right. And am I correct that
23 with respect to site preparation, just looking at the
24 numbers, there was an increase after introduction of
25 the 1972 forest production policy of approximately 118

1 per cent in site preparation activity?

2 A. That seems to be correct.

3 Q. Could I give you the numbers, Mr.

4 Tworzyanski, and I would ask you just to confirm them
5 over the break and let me know if I've simply done the
6 math correctly.

7 What I'm going to suggest to you is this;
8 that as suggested by the task force committee, that as
9 a result of the 1972 forest production policy, just
10 looking at the years 1972 to 1980, there was an
11 increase in site preparation of 118 per cent - these
12 are in round terms - there was an increase in planting
13 and seeding of some 80 per cent, and there was an
14 increase in tending of some 148 per cent.

15 Could you check those numbers for me,
16 sir, and let me know after the luncheon break?

17 A. I will do that.

18 Q. Thank you. Whether the numbers be
19 accurate or not, can we agree now that this table
20 indicates very significant improvements or increases in
21 those forms of silvicultural activity after
22 introduction of the forest production policy?

23 A. Yes, it does show very significant
24 increases.

25 Q. All right.

1 THE CHAIRMAN: Mr. Tworzyanski, why would
2 these numbers of a 1988 report only go up to 1980?

3 MR. TWORZYANSKI: I really can't say, Mr.
4 Chairman, which is why it was restricted to that.

5 MS. CRONK: I may be able to help, sir,
6 both you and the witness.

7 Q. Am I correct, Mr. Tworzyanski, that
8 what is being discussed in this particular -- sorry,
9 what is being illustrated or depicted in this
10 particular table and in the preceding discussion is the
11 level of increase in silvicultural activity
12 attributable, in the view of the authors, to the forest
13 production policy of 1972 just looking at that time
14 frame, and then they go on to talk about the next
15 increase in the level of silvicultural activities which
16 the author suggests was the result of the FMA program?

17 MR. TWORZYANSKI: A. Yeah, the dates
18 were just too obvious. You are correct, the FMA
19 program started in 1980, so that is the natural split.

20 Q. So if we were to look then at the
21 level of increase after inception of the FMA program,
22 there is discussion of that in this report as well?

23 A. Yes, that's correct it picks up in
24 80-81.

25 Q. And indeed looking back at the table

1 that we looked at earlier, with respect to harvesting,
2 regeneration, tending and site preparation, that showed
3 the level of silvicultural activity from inception of
4 the FMA program?

5 A. That's right.

6 Q. Right this table then is directed to
7 what the task force regarded as being the direct
8 consequence of the commitment and funding ensured by
9 the forest production policy of 1972?

10 A. That's correct.

11 Q. All right. Thank you, sir.

12 Q. And would you agree with me then, Mr.
13 Tworzyanski, then just examining this issue of the
14 importance of government policy to timber management
15 activities that the statistics do in fact bear out the
16 conclusion expressed by the task force committee that
17 the 1972 forest production policy was: "...an
18 extremely effective mechanism within government" for
19 ensuring a continuity both of commitment and
20 funding?

21 A. Yes, I would agree with that
22 conclusion.

23 Q. All right. And that the conclusion
24 is supported by these statistics?

25 A. Yes, it is.

1 Q. All right, thank you. I suggest to
2 you further, Mr. Tworzyanski, apropos the discussion
3 that took place a few moments ago, that there is
4 absolutely no reason to believe that a new timber
5 production policy would accomplish any less; is there?

6 A. I wouldn't expect a new one to
7 accomplish less, no.

8 Q. All right. And in fact one of the
9 advantages I suggest of an early completion and
10 introduction of a new timber production policy would be
11 exactly that; that is, to utilize it as a mechanism to
12 ensure commitment and funding of silvicultural activity
13 in the area of the undertaking?

14 A. I would assume it would be used in
15 that vein, yes.

16 Q. All right. Well, apart from
17 assumptions, and I'm not quarreling with the word, but
18 I'm interested in your view on it, and what I'm
19 suggesting to you is that a new timber production
20 policy would serve the same function as did the
21 previous one; and, that is, it would provide a
22 mechanism within government for ensured commitment and
23 funding for silvicultural activity in the area of the
24 undertaking?

25 A. I would say for assuring a

1 commitment.

2 Q. That's fine.

3 A. Yes.

4 Q. Thank you. And that, I suggest to
5 you, would be a factor to be considered in assessing
6 the desirability of early completion of a new timber
7 production policy?

8 A. Yes, it would.

9 Q. All right. And then in fairness to
10 my friend Mr. Lindgren, if I could come back to the
11 timing aspect of this. I understood what you said, Mr.
12 Cary, in reply to Mr. Martel's question to be that the
13 results of Phase I of the timber production policy you
14 anticipated would be ready in preliminary form by the
15 end of this year. Did I hear that correctly?

16 MR. CARY: A. I said that the six
17 background papers would go out for public comment by
18 the end of this year. The determination of a, or the
19 recommendation as a result of the papers and the
20 discussions in the papers will occur later, next year.
21 So Phase I should be complete next year, I don't know
22 exactly when next year.

23 Q. All right.

24 A. It's the six background papers that
25 will be out for public review and comment I understand

1 by the end of this year.

2 Q. All right. So then dealing just with
3 that aspect of it, the answer to Mr. Lindgren's enquiry
4 is that those background papers will be publicly
5 available by the end of this year; is that correct?

6 A. That is my understanding.

7 Q. All right. And thereafter, obviously
8 when comment, reaction, amendment, re-thinking as
9 appropriate takes place, Phase I will be completed by
10 the end of next year?

11 A. Yes.

12 Q. That is your current understanding?

13 A. That is my current understanding.

14 Q. All right.

15 A. And hope.

16 Q. All right. And forgive me, sir, but
17 do you speak for the Ministry in providing those dates?

18 A. Yes, I do.

19 Q. All right. And Phase II is, I take
20 it then, completion of the new timber production
21 policy?

22 A. Yes.

23 Q. All right. And we are now at the end
24 of 1990 for the completion of Phase I. How long
25 thereafter do you anticipate will be required to

1 complete Phase II of the new timber production policy,
2 or do you know?

3 A. I do not know.

4 Q. All right. Is there --

5 MR. MARTEL: It's a rotation.

6 MS. CRONK: Sorry, sir?

7 MR. MARTEL: It's a rotation.

8 MS. CRONK: Q. Is there some operable
9 timing on which the Ministry is operating at the
10 moment; something short I hope, of one rotation?

11 MR. CARY: A. I will undertake to make
12 some enquiries--

13 Q. Thank you.

14 A. --over lunch and get back to you.

15 Q. Thank you very much.

16 MS. CRONK: That was by way of an apology
17 to my friend Mr. Lindgren, sir, for having reacted as
18 quickly as I did. I too was interested in the answers.

19 Q. Can we agree as a general matter, Mr.
20 Tworzyanski and Mr. Cary, that a new timber production
21 policy will assist in assuring, to use your word Mr.
22 Tworzyanski, commitment and funding not only for
23 silvicultural activities in the area of the undertaking
24 but for all MNR timber management programs generally?

25 MR. CARY: A. Yes.

1 Q. Do you agree, sir?

2 MR. TWORZYANSKI: A. Yes. Yes, I do.

3 Q. Thank you.

4 MS. CRONK: Mr. Chairman, I'm going to
5 deal with -- I propose to deal with one of the terms
6 and conditions proposed by the MNR. I would probably
7 be another 15 or 20 minutes, but I have taken longer
8 than I said. Do you wish to break now?

9 THE CHAIRMAN: Well, I think we might as
10 well finish off your examination and break for lunch
11 and then come back and start with the next party.

12 MS. CRONK: Thank you, sir.

13 Q. I'm uncertain as to whom these
14 questions should be directed. I'm going to try in the
15 first instance to direct them to Dr. Osborn; only, sir,
16 because your evidence was directed to certain of the
17 provincial aspects of the terms and conditions, and if
18 there is someone on the panel who more appropriately
19 can deal with this, would you simply let me know.

20 I would ask you to go to condition 54 of
21 Exhibit 700. As I understand this condition, Dr.
22 Osborn, it is the condition which obliges the Ministry
23 to produce an annual report on timber management to be
24 tabled in the Legislature and it was in part that
25 report to which your evidence was directed; am I right

1 in that?

2 DR. OSBORN: A. Correct.

3 Q. All right. And the condition as
4 currently framed, the actual language of the condition
5 provides that:

6 "The annual report to be produced by the
7 Ministry is to contain certain types of
8 information."

9 And they are set out in subparagraphs (a)
10 through (e)?

11 A. Correct.

12 Q. All right. Is it your understanding,
13 sir, that the terms of this condition are mandatory
14 with respect to the types of information to be included
15 in this annual report to be prepared by the Ministry?

16 A. I understood 54 to be mandatory. The
17 exact content in terms of whether those specific words
18 per se will describe exactly what happens I am unsure
19 of because the details under those headings as I have
20 identified have not been clarified.

21 Q. All right. My concern is this, Dr.
22 Osborn, and if there is someone else on the panel who
23 can assist by all means, please do so.

24 The lawyers have a very bad habit of
25 looking at the verbs that appear in terms of this kind

1 and, in this case, the introductory language to the
2 information descriptions includes the words 'the report
3 shall include'.

4 If you are uncertain as to whether those
5 information types are to be required in a mandatory
6 fashion for inclusion in the annual report, is there
7 anyone else on the panel who can help me? I understood
8 you to say, Dr. Osborn, you were unclear as to whether
9 it was to be mandatory or not?

10 A. Personally I have no difficulty with
11 what's in those five items from (a) to (e) with one
12 exception which I alluded to in the evidence-in-chief.

13 I personally have difficulty with the
14 value of the item (e) in that term and condition on an
15 annual basis, as was explained, and that is the only
16 one of those five where I personally have some
17 difficulty in its value on an annual basis, and it's
18 perhaps for that reason that I am somewhat hesitant in
19 the answer.

20 Q. All right. The difficulty that I
21 have, Dr. Osborn, is this: There is two ways to put a
22 question of this kind to panel members with your
23 expertise and that of your colleagues; it is first to
24 elicit your own opinion as to whether it's appropriate
25 or not, and the second is to say: What is the

1 Ministry's position as to whether these things are
2 mandatory.

3 It's the second question I'm asking, and
4 perhaps Ms. Murphy can help me.

5 MS. MURPHY: I think it's pretty clear
6 that the information types that are listed here are
7 intended to be included in this report. As I
8 understand Dr. Osborn's evidence, he's just explaining
9 that as a professional and as a person who deals with
10 this, he has some difficulty in being able to pinpoint
11 exactly how some of that information might be displayed
12 at this point in time, as I understood the evidence.
13 Perhaps he could clarify.

14 THE CHAIRMAN: Well, what happens if it's
15 a mandatory condition, suppose the condition is worded
16 'shall include the following types'?

17 DR. OSBORN: Mr. Chairman, that's easy,
18 we will so do. That is very straightforward, so that
19 is -- we can do (a) to (e).

20 THE CHAIRMAN: Okay. So you are just
21 indicating you are not sure how (e) will be displayed
22 or how you will arrive at producing the information
23 contained in (e)?

24 DR. OSBORN: Correct, sir.

25 THE CHAIRMAN: But it will be there?

1 DR. OSBORN: Yes, sir.

2 THE CHAIRMAN: In some form.

3 MS. CRONK: Right. Thank you.

4 Q. Could I deal then just with the point
5 that you raised, Dr. Osborn, with respect to
6 subparagraph (e) you said you had some difficulty
7 personally with that; that is, the requirement that the
8 report include an estimate of the change in forest
9 growing stock during the year.

10 Is the nature of your difficulty simply
11 this, that in fact it won't change much from year to
12 year?

13 DR. OSBORN: A. That is part of the
14 understanding of the value. The difficulty, however,
15 also is in obtaining of the data.

16 Q. All right. And you are, therefore,
17 suggesting that it may not -- are you, therefore,
18 suggesting that it may not be appropriate that in fact
19 in each year an effort be made to estimate that change?

20 A. That's correct.

21 Q. All right. Do I take from it that
22 where the information is obtainable or is available,
23 the two being different, and where a change has in fact
24 occurred, that there would be value in including such
25 an estimate?

1 A. Certainly.

2 Q. All right. But where neither of
3 those things are the case, perhaps more flexibility in
4 the language of this condition should be introduced?

5 A. Yes, to the extent I would advocate
6 it go into the five-year situation rather than annual.

7 Q. All right. And looking then at
8 subparagraph (c) it's really to that subparagraph that
9 my enquiry is directed, Dr. Osborn. It refers to a
10 summary of management activities, areas declared free
11 to grow and second-year survival results.

12 If you could hold the language of that
13 condition in mind, if you would, and then turn to
14 condition 43. Condition 43 provides again in what I
15 suggest is mandatory language that the MNR will improve
16 its assessment and reporting of silvicultural
17 effectiveness.

18 Just stopping there for a moment, you
19 would agree that that is the nature of the condition
20 and that the language is mandatory as expressed?

21 A. Yes.

22 Q. All right. And the balance of
23 condition 43 suggests that at the management unit level
24 certain types of assessment data will be reviewed every
25 five years?

1 A. Yes.

2 Q. And one of the types of assessment
3 data referred to is second-year survival information?

4 A. Yes.

5 Q. Is it the intention that second-year
6 survival information be reviewed every five years?

7 A. Yes.

8 Q. For the purposes of preparing the
9 state of the forest report.

10 A. Yes.

11 Q. All right. Then if we could relate
12 that condition with condition 54 subparagraph (c), is
13 it intended by the Ministry that second-year survival
14 data be prepared on a continuing basis?

15 A. Yes.

16 Q. For all management units?

17 A. Yes.

18 Q. Including CMUs?

19 A. Yes.

20 Q. Who is it intended should carry out
21 those second-year survival assessments?

22 A. On which units, please?

23 Q. Let's start with FMAs, who is to do
24 it?

25 A. Then the people who are managing the

1 area.

2 Q. Do you mean the FMA holder?

3 A. In that case.

4 Q. Is it then the position of the
5 Ministry that those second-year survival assessments
6 are to be mandatory and are to be carried out by FMA
7 holders on FMA units?

8 A. The reason I hesitate is that this is
9 and item that is - and this is not an item that is
10 unique - an item of one of many that is discussed in
11 the agreement as to who has responsibility for which
12 piece of the action. And the reason I hesitate is that
13 at this point in time this particular item has not been
14 discussed, as far as I'm aware, in any agreement.

15 THE CHAIRMAN: But presumably if this
16 were a condition of approval it would be placed upon
17 the Ministry which would then ensure through some
18 mechanism that it would find its way into an agreement
19 and there the responsibility would be determined
20 vis-a-vis the agreement.

21 DR. OSBORN: Yes, Mr. Chairman, exactly.
22 That's really why I hesitated because that has not yet
23 been ascertained unit by unit.

24 MS. CRONK: Q. Well my concern, Dr.
25 Osborn, is simply this: You can assume for the

1 purposes of my next question that I am familiar with
2 the current obligations under the agreements, these
3 terms and conditions are directed to what you are
4 asking this Board to approve in the future as a
5 condition of the undertaking, and what I wish to know
6 is: What the Ministry position as to whether
7 second-year survival data collection is to be mandatory
8 in the future; and, if so, on FMA lands, what is the
9 Ministry position as to who should collect it, or do
10 you know?

11 DR. OSBORN: A. The first question I do
12 know, the first question is, yes, the second-year
13 survival will be mandatory on all Crown lands; the
14 question I do not know at this point in time.

15 Q. Would you agree with me that the way
16 the condition is worded at the moment it leaves open
17 the question as to whether that is to be a Ministry
18 obligation or a Ministry/industry joint obligation, or
19 an industry obligation?

20 A. It does, for the reason the Chairman
21 just alluded to.

22 Q. All right. Would you also agree with
23 me, Dr. Osborn, that when we look conceptually at the
24 types of assessments that the Ministry is proposing
25 should be carried out on fixed regular bases, that the

1 fundamental criteria in assessing the reasonableness of
2 that approach is to determine whether the information
3 is going to be useful?

4 A. Yes, much as was alluded to earlier
5 this morning.

6 Q. All right. So that if it's proposed
7 that a particular form of data be collected, stored and
8 retrieved on a regular basis, would you agree with me
9 that as a precondition, if you will, to the imposing of
10 that kind of an obligation, regardless of the identity
11 of the person on whom it's imposed, the data must be
12 useful?

13 A. Very much so.

14 Q. All right. And I would like to then
15 return, if I could -- not return at all, but to go to
16 Mr. Gordon with some of the evidence that you gave
17 earlier before this panel regarding second-year
18 survivial data.

19 MS. CRONK: And I'm referring, Mr.
20 Chairman, to the evidence in Panel 4.

21 Q. Mr. Gordon, do you recall that part
22 of your evidence in Panel 4 concerned second-year
23 survivial data as well as stocking data?

24 MR. GORDON: A. Yes.

25 Q. All right. And in Volume 30 at page

1 4986 you gave the following evidence, at line 2.

2 MS. MURPHY: What volume?

3 MS. CRONK: Volume 30, page 4986.

4 Q. Do you have it?

5 MR. GORDON: A. Mm-hmm.

6 Q. Starting at line 2:

7 "For example, a stocking survey does not
8 on its own indicate whether or not you
9 have got effective regeneration, it may,
10 it may not; a survival assessment does
11 not indicate whether or not you have got
12 effective regeneration, it may indicate
13 that you have been effective
14 silviculturally or ineffective
15 silviculturally. What we want to do is
16 wait until the stand develops over a
17 number of years and then take a look at
18 it and use free to grow as a benchmark to
19 say, yes, we have been successful."

20 Now, stopping there for a moment, Mr.
21 Gordon. Would you agree with me that that -- first of
22 all, obviously that was your evidence; was it not?

23 MR. GORDON: A. Yes, and I stand by it.

24 Q. All right. The suggestion there
25 being that survival data or survival rates cannot be

1 equated to achieving regeneration effectiveness.

2 A. That's correct.

3 Q. All right. And that is still your
4 view?

5 A. That's correct.

6 Q. All right. And over then at the next
7 page of the same transcript, there is a lengthy
8 question and answer given, and I direct you to the
9 first portion of your answer in which you indicate -- I
10 am sorry, the question was this:

11 "Why are you hesitant to say that you
12 have successful regeneration based on
13 survival but you aren't willing or ready
14 to say that you have got regeneration
15 effectiveness if you have got successful
16 survival and stocking assessments which,
17 as I understand it, occur earlier in the
18 life of a stand than the free to grow
19 survey?"

20 And your answer - and I believe this was
21 to Mr. Freidin - was:

22 "That this might show up in Mr. Armson's
23 presentation on SOARS -- the results of
24 SOARS."

25 And then you indicated:

1 "But you can very often have initial high
2 survival rates for planted trees and on a
3 large portion of the sites out there
4 competition problems do develop and if
5 you don't take care of those trees, tend
6 those trees, deal with the competition
7 then even though perhaps you have had 80
8 or 90 per cent survival rates in year one
9 or two, in year five or seven you haven't
10 tended those sites you may have a much
11 lower survival rate at that point in
12 time."

13 Is that still your view, Mr. Gordon?

14 A. That's correct.

15 Q. All right. And in the same
16 transcript, perhaps just to abbreviate this, over at
17 pages 5047 to 5048, you indicated in response to
18 another question from Mr. Freidin that you were
19 'downplaying', that was your word:

20 "...downplaying the relative importance
21 of second-year survival data in relation
22 to the importance of free to grow data
23 but you still thought it was important to
24 have some data relating to survival
25 statistics put in front of the Board..."

1 And that is why you had done so; do you
2 recall that?

3 A. Yes, that's correct.

4 Q. All right. My suggestion is simply
5 this, Mr. Gordon, that there is, can you agree with me,
6 some room for disagreement as to the usefulness of
7 second-year survival data as a measurement of
8 regeneration effectiveness based on your own evidence?

9 A. I'm not sure that there is room for
10 disagreement. I think my position is fairly clear.
11 Who am I disagreeing with?

12 Q. All right. They are not useful for
13 that purpose?

14 A. What my evidence is is that things
15 change over time and while you may have initially high
16 survival results the important and most important
17 indicator we put forward is free to grow assessment.

18 Q. And in fact what your evidence was
19 that the free to grow data is in fact the benchmark to
20 which the Ministry is and will be looking; am I right
21 in that?

22 A. Very clearly so, and I believe - and
23 hopefully I'm correct - that one would provide such
24 data as free to grow results and second-year survival
25 results in the provincial reports that we will

1 emphasize the importance of the free to grow results.

2 Q. All right. So we have a situation
3 then where one of the terms and conditions proposed by
4 the Ministry for approval by the Board is that the
5 Ministry improve it's silvicultural effectiveness
6 reporting?

7 A. That's correct.

8 Q. And then it's proposed that certain
9 types of data be collected on a continuing basis for
10 that purpose, one of which is second-year survival
11 data; that's condition 54. Am I right so far?

12 A. Maybe we should go over something.
13 Condition 43 relating to silvicultural effectiveness is
14 directed towards reporting information at the
15 management unit level; whereas condition No. 54 is
16 related to reporting information on a provincial basis.

17 Q. All right. I understand the
18 distinction, but is it not true that condition 43 both
19 imposes an obligation to improve silvicultural
20 effectiveness, but to collect certain data for the
21 purposes of the state of the forest report, which is a
22 provincial report.

23 And it's that report that is to include a
24 provincial overview of silvicultural effectiveness. My
25 point being, the two are linked together; aren't they?

1 A. There is a link, yes.

2 Q. All right. So can I come back to
3 this proposition; that we have on the one hand the
4 obligation that the information be collected pursuant
5 to condition 54, and under condition 43 that it be used
6 in a certain way and that is for use in the state of
7 the forest report; is that right?

8 A. Yes. Some of the information that
9 you will use at the local level to prepare your report
10 of past forest operations will and can be used towards
11 reporting on an overview of silvicultural effectiveness
12 in the state of the forest report.

13 Q. And that includes second-year
14 survival data under the way this condition is drafted?

15 A. Yes. What you have to recognize, it
16 may be possible relative to reporting second-year
17 survival results in the state of the forest report to
18 use a small sample size to be able to develop a
19 provincial overview; whereas for a given management
20 unit you may not use exactly the same data set.

21 Q. All right. Well, whether you use the
22 same data set or not, we have an obligation to collect
23 it under condition 54 for the purposes of a certain
24 kind of provincial report, the MNR's annual report, and
25 we have an obligation to refer to it in another kind of

1 provincial report, the state of the forest report?

2 A. That's correct.

3 Q. All right. And can we agree on this:

4 That second-year survival data provides you with
5 information at nothing more than a particular point in
6 time, it's a snapshot of a stand situation at a
7 particular point in time; that is, two years after
8 planting, that is when it's conducted?

9 A. That's correct.

10 Q. All right. And obviously, because
11 it's a snapshot in time, the nature of your evidence in
12 Panel 4 was that that will change over time and the
13 survival statistics you collect in year two may be very
14 different from those that are in fact applicable in
15 year three, year four or year five?

16 A. That's correct.

17 Q. All right.

18 A. And as a local manager it's very
19 important to me that I know how well my tree planting
20 program is doing, so I will want to know what survival
21 results are.

22 Q. And at the local level that I will
23 assist in management decisions?

24 A. That's correct. And, as well, if I'm
25 in main office, I think it's very appropriate to be

1 able to monitor the trend survival rates on a
2 provincial basis as to whether or not we are being more
3 successful in early survival rates in the tree planting
4 program or if we are having a downward trend.

5 Q. All right.

6 A. And I think it's appropriate to put
7 that type of information before the public realizing
8 that we are emphasizing the results from free to grow
9 surveys.

10 Q. All right. And to the extent that
11 that information is collected and available - I'm
12 agreeing with you that's appropriate that it be placed
13 before the public - pluck but I would like to examine
14 with you what is inherent in second-year survival data,
15 and we have done that a bit so far.

16 I want to suggest to you now as well that
17 free to grow data, being the benchmark to which you
18 have told me the Ministry is and will be looking,
19 involves as one of its major components stocking
20 assessments, a stocking determination; is that right?

21 A. That's correct.

22 Q. All right. And that that
23 determination, or perhaps I can put it this way:
24 Survival statistics do not correlate directly with
25 stocking; isn't that so?

1 A. That's correct.

2 Q. All right. They do not account for
3 the contribution of natural regeneration and, in fact,
4 that was the import of your evidence to the Board
5 during Panel 4?

6 A. That's correct.

7 Q. They do not take into account the
8 spacial arrangement of seedlings?

9 A. That's correct.

10 Q. And they do not take into account, if
11 I can put it this way, the inherent carrying capacity
12 of the site for a particular planted species?

13 A. That's correct.

14 Q. All right. They don't deal with any
15 of that, what they do is they provide information at a
16 particular point in time that may be very different
17 immediately after that snapshot has been taken; isn't
18 that so?

19 A. It may be fairly different, usually
20 it isn't.

21 MRS. KOVEN: Excuse me, Mr. Gordon. And
22 didn't we receive testimony on this point a long time
23 ago that in fact when you are looking at the
24 second-year survival situation that that is one point
25 that will give you -- if in fact you have a very bad

1 situation, if in fact the chances of having very much
2 regeneration are slim, you will be able to see that at
3 the second-year survival time as opposed to waiting
4 until the 7 to 12-year free to grow stage, and in fact
5 you may be able to undertake some further action at
6 that point?

7 MR. GORDON: That's correct.

8 MS. CRONK: Q. And, in that sense, they
9 serve a useful early indicator of stand conditions?

10 MR. GORDON: A. That's correct.

11 Q. That may be relevant to course of
12 treatments that may be undertaken?

13 A. That's correct.

14 Q. All right. That is different,
15 however; is it not, from suggesting that on a
16 continuing basis they provide data which is necessary
17 to adequately report to the public on a provincial
18 basis as to the state of the forest?

19 There's a big jump between those two;
20 isn't there, being useful on the one hand to local
21 managers and being necessary to fully and completely
22 report on the state of the forest to the public?

23 A. Well, obviously second-year survival
24 results will not allow you to report completely on the
25 state of the forest to the public.

1 Q. I'm suggesting you could in fact --
2 I'm sorry.

3 A. And that is not the intention of
4 that. What the intention of that reporting is to
5 provide to the public a piece of the information on how
6 the trees are growing that they have spent money on
7 growing them in nurseries and, as well, as they have
8 funded the planting of those trees.

9 And that's probably one of the most
10 significant components and one of the largest
11 expenditures of money within the timber management
12 program, and I believe it is appropriate to report on
13 that to the public.

14 Q. All right. And we have no
15 disagreement there. I should make the purpose of these
16 questions clear to you, Mr. Gordon.

17 What I'm concentrating on is the apparent
18 requirement under the MNR's proposed terms and
19 conditions that collection of this data be mandatory,
20 and I'm examining in the context of the mandatory
21 obligation the usefulness of this information in
22 measuring silvicultural effectiveness, achievement or
23 failure, and I'm essentially suggesting to you, sir,
24 that second-year survival data can, for the reasons I
25 have outlined to you, be misleading indicators of

1 silvicultural success or regeneration success. Would
2 you agree with that?

3 A. They could be if you interpret them
4 incorrectly.

5 Q. Well, in fact..

6 A. The other thing I would like to point
7 out though is, there is a link between clauses 43 --
8 term and condition 43 and 54.

9 Q. Yes.

10 A. But the reporting in 54 will probably
11 be based on a provincial sample and it does not say or
12 require that second-year survival assessments be
13 carried out on every single management unit.

14 What 54 commits MNR to doing is providing
15 a provincial summary of second-year survival results
16 which we may be able to obtain through samples, et
17 cetera, by not having second-year survival results from
18 every single management unit, but it still may be
19 statistically valid depending on how you set up your
20 sample design.

21 Q. Mr. Gordon, it may well be that if it
22 was to be approached on that basis, you would have no
23 further quarrel from me at all, but that is not what I
24 understood Dr. Osborn's evidence to be.

25 So let me repeat the basic question and

1 if you need time to consider it, gentlemen, over lunch
2 then I will ask the Chairman that we rise now.

3 I put to Dr. Osborn the question of
4 whether these were to occur on every management unit
5 every two years and were they to be mandatory, and I
6 received an affirmative answer to all three of those
7 questions.

8 DR. OSBORN: A. I think the sampling
9 design would be that it is at every management unit, it
10 will not be every two years, it will be done every
11 year, and that is the very likely design that the
12 sample explained.

13 Q. All right. Could I ask you then,
14 gentlemen, are either of you in the position at the
15 moment to speak to the Ministry on this issue? I would
16 like to know know what the Ministry's intention is with
17 respect to condition 54 as to the frequency of survival
18 data collection and as to whether or not it's going to
19 be mandatory on every management unit?

20 DR. OSBORN: A. I can answer the first
21 question, the frequency will be every year.

22 Q. Well, I am sorry, sir, I now --

23 MS. CRONK: Mr. Chairman, you may
24 appreciate the difficulty I have, and I am going to ask
25 that the panel be given an opportunity to consider this

1 matter. Perhaps Ms. Murphy can inform me after the
2 break.

3 I now have what I perceive to be two
4 well-intented and no doubt completely candid but,
5 nonetheless, conflicting answers and I'm not really
6 interested in their personal opinion, I need to know
7 for our client's purposes what the Ministry position is
8 on this issue.

9 THE CHAIRMAN: All right. Do you have
10 any objections with Ms. Murphy discussing this one
11 question with these witnesses over lunch?

12 MS. CRONK: No, I do not, sir.

13 THE CHAIRMAN: All right. Perhaps we
14 will adjourn for lunch and we will return at 2:45.

15 MS. CRONK: Thank you, sir.

16 THE CHAIRMAN: Thank you.

17 ---Luncheon recess taken at 1:15 p.m.

18 ---On resuming at 3:00 p.m.

19 THE CHAIRMAN: Thank you, be seated,
20 please.

21 Ms. Cronk, with respect to our discussion
22 this morning about proceeding this afternoon with at
23 least some of the counsel putting in their submissions
24 regarding the standard of conduct with counsel dealing
25 with the media.

1 We don't have any objections we think in
2 hearing from yourself this afternoon, but we feel that
3 to hear from the other parties today would be pushing
4 it, and we would prefer to do that tomorrow towards the
5 end of the day.

6 We are still expecting Mr. Turkstra, in
7 fact I have Ms. DeVaul trying to ascertain exactly when
8 he's going to arrive, which we haven't been able to do
9 yet unfortunately, and that session is going to take a
10 little while later today and we want to go as late as
11 we can, yet perhaps leave some time for you to put in
12 your submissions towards the end of the day.

13 So does that assist you in any way?

14 MS. CRONK: Yes, indeed it does, sir.
15 That is fine, and...

16 THE CHAIRMAN: You may not be around to
17 hear the comments of the other parties, but I take it
18 your colleagues would monitor that for you?

19 MS. CRONK: Indeed, absolutely. That is
20 fine, sir. And what we will do is we will notify then
21 the counsel who we have already spoken with today who
22 said they could be available that they should be here
23 tomorrow at the end of the day.

24 MR. LINDGREN: Mr. Chairman, is it your
25 intention to have these other submissions made at the

1 end of the day tomorrow or perhaps in the evening?

2 THE CHAIRMAN: Yes, yes, tomorrow at the
3 end of the day because again we want to spend the
4 majority of the day dealing with the evidence.

5 MR. LINDGREN: Thank you.

6 MS. CRONK: Thank you, sir. All right,
7 we will telephone them.

8 THE CHAIRMAN: Thank you.

9 MS. CRONK: Q. Mr. Gordon, with
10 reference then to conditions 54 and 43, is it the MNR's
11 position, and by that I mean the position of the
12 Ministry, that in the future the collection of
13 second-year survival data is to be mandatory on all
14 management units?

15 MR. GORDON: A. Perhaps I will allow Dr.
16 Osborn to answer that question.

17 Q. Fine.

18 DR. OSBORN: A. Mr. Chairman, in light
19 of your direction we have got a little piece of an
20 overhead to show that we think will help explain the
21 situation and maybe ultimately lead to the answer to
22 counsel's question.

23 MS. CRONK: The ultimately bothers me a
24 bit, but I would be delighted to see the overhead.

25 THE CHAIRMAN: There is going to be an

1 answer though?

2 DR. OSBORN: Oh yes, sir.

3 There seemed to be some confusion between
4 term and condition 43 and 54. So this table shows
5 terms and conditions, the report being spoken to in the
6 management plan report, the provincial state of the
7 forest report and the provincial annual report.

8 43 states that -- 43 primarily actually
9 is to get the Crown to improve SIS and SAS. 43 states
10 that survival, free to grow type, stocking type data
11 will be collected to be reported in the timber
12 management plan review at the end of every five years
13 at the management unit level. That is in term and
14 condition 43.

15 MS. CRONK: Q. Could I ask you at that
16 point, Dr. Osborn, before you move on: Do you
17 understand condition 43 to be requiring the collection
18 of survival data at any particular point in time?

19 DR. OSBORN: A. Yes.

20 Q. When?

21 A. Every year.

22 Q. Every year?

23 A. Yes.

24 Q. So that when we see a reference in
25 condition 43 to second year survival data, explain to

1 me that concept, that we collect every year second-year
2 survival data where a second-year survival situation
3 exists; is that what you are saying?

4 A. Yes, yes.

5 Q. On every management unit?

6 A. That's exactly -- yes, otherwise at
7 the end of every five years in the timber management
8 plan which is done management unit by management unit,
9 I'm having difficulty understanding how we can do a
10 silvicultural effectiveness for that management unit in
11 that timber management plan document unless it is
12 management unit by management unit.

13 Q. All right. Just so that I understand
14 this point. In the case of an FMA holder then, are you
15 saying to the Board that condition 43 will require an
16 FMA holder to collect survival data each and every
17 year?

18 A. I have not spoken to, and we have
19 been through this before, and I do not have -- the
20 Ministry does not have a proved question and answer.

21 Q. Someone in respect of an FMA
22 management unit--

23 A. Yes.

24 Q. --each and every year will have to
25 collect survival data?

1 A. Yes. Also in 43 there is an
2 inference that the data will be wrapped up into the
3 provincial state of the forest report to describe
4 silvicultural effectiveness. So that in terms of level
5 of geography is at the province. Given the use of
6 those data as silvicultural effectiveness data for
7 timber supply analysis which was explained, the
8 inference is, although not explicitly stated, that that
9 will come management unit by management unit. The
10 purpose of those data in the state of the forest report
11 was to analyse the wood supply scenario management unit
12 by management unit.

13 THE CHAIRMAN: That would be the same
14 information though as far as second-year survival rates
15 go?

16 DR. OSBORN: Yes, sir, therefore, I
17 included the data collected on an annual basis would in
18 turn not only be used on a management unit basis in the
19 review of what I have done in the last five years, but
20 also would be used into projection of wood supply for
21 the future for that management unit.

22 Now, the ultimately is happening.

23 MS. CRONK: Thank you.

24 DR. OSBORN: Term and condition 54 speaks
25 to the provincial annual report, and here I was too

1 hasty this morning, professional enthusiasm. The
2 Ministry's position at the moment in the provincial
3 annual report; as to how those second-year survival
4 data will be collected, the sampling design for how to
5 collect those at this point in time has not yet been
6 decided.

7 So the long-winded answer to your
8 question was, for the provincial annual report the
9 Ministry does not have a position at this point in time
10 as to whether that will require second-year survival
11 data at each and every management unit as part of its
12 sampling design.

13 THE CHAIRMAN: Does that matter if you
14 have already got that data from 43 above?

15 DR. OSBORN: And, in all honesty, sir,
16 looking at this, the inference is logically the same
17 sort of data collected at a management unit level for
18 the first two purposes would serve the third, and that
19 would be a logical extension, and I make one caveat. I
20 will almost guarantee that the number of samples
21 required for the provincial value in the annual report
22 will be far less than typically the number of samples
23 taken anyway in the management unit level for the first
24 two purposes.

25 THE CHAIRMAN: No, but can't you pluck

1 out the information for the provincial annual report
2 from all of the management unit data that you have got
3 on second-year survival rates and just take the number
4 you want and say this is the sample that we'll use for
5 the provincial annual report?

6 DR. OSBORN: And that is exactly what is
7 envisaged in the sampling design, as far as I'm
8 personally concerned, sir, but the Ministry as a whole
9 has not got its head around exactly how that will be
10 conducted.

11 MS. CRONK: Q. Can I just deal with a
12 number of aspects of this, Dr. Osborn. Let's talk
13 about it first at the management unit level.
14 Management unit A - doesn't matter which one - they
15 plant in 1980; is survival data to be collected in
16 1982.

17 DR. OSBORN: A. Yes, for the areas
18 planted in 1980.

19 Q. Yes. Assuming no planting was done
20 in 1981, is there survival data to be collected at any
21 point other than 1982?

22 A. Not so far in your sequence.

23 Q. All right. Perhaps this is the
24 nature of my confusion. When you say that the survival
25 data is to be collected each and every year, let's just

1 take one management unit, do you mean in two-year
2 cycles according to when planting occurs on that
3 particular management unit?

4 A. Yes, every time you plant, whatever
5 year you are planting--

6 Q. Two years later?

7 A. --you go back and check: Did it
8 grow, did it survive, did it ***bring side up still.

9 Q. All right. So that on a particular
10 management unit, if planting occurs only once during a
11 five-year period, there is only one survival data
12 collection effort undertaken and that is two years from
13 the date of planting?

14 A. Correct.

15 Q. I understand, thank you. And with
16 respect to the provincial annual report and condition
17 54 we should, in reading condition (iv), and the Board
18 in determining whether the language of condition 54 as
19 currently written is appropriate, should bear in mind
20 what you just said about the Ministry's as yet
21 undetermined position as to how that is to be collected
22 or in what fashion?

23 A. Certainly.

24 Q. All right. And is it the intention
25 or have you been able to ascertain whether it is the

1 intention of the Ministry prior to the conclusion of
2 the Ministry's case to assist us as to its more formal
3 position with respect to condition 54?

4 A. That I do not know at this point in
5 time.

6 MS. CRONK: May I ask through you, sir,
7 that enquiry of Ms. Murphy. I would like that
8 information while we have MNR witnesses before you.

9 MS. MURPHY: I think it's just difficult
10 for us to answer, if we don't know when a decision is
11 going to be made. You will certainly be apprised of it
12 when it's made. I would have to consult with the
13 witnesses and other people to find out when that
14 decision is going to be made.

15 Perhaps we can understand that particular
16 difficulty better if we can understand what the issue
17 is that they are trying to resolve. As I understand
18 it, it has something to do with sampling design.

19 MS. CRONK: Well, I'm not going to get
20 into a debate, sir, with Ms. Murphy about that
21 particular issue, but I would like to suggest this: I
22 understand that it is not necessarily within her
23 control as to when this decision will be made or when
24 there will be an articulation by the Ministry with
25 respect to condition 54, but when Ms. Murphy is in a

1 position to inform the Board of that; if it is
2 necessary, it may not be, I would like to reserve the
3 right to have an MNR witness here to attend to the
4 asked questions about that, whether it's in the middle
5 of our case or someone else's, before the conclusion of
6 this hearing.

7 THE CHAIRMAN: I take it, Dr. Osborn, you
8 don't expect that that kind of decision would be made
9 subsequent to the negotiating session in February and
10 prior to April 30th when we are asking the parties to
11 in effect finalize their conditions of approval?

12 DR. OSBORN: I can't easily hazard a
13 guess, sir, exactly when this will be undertaken. The
14 forest resources group in MNR is well aware of a need
15 to resolve how this is going to be done; the timing of
16 when they will get their heads around the resolution of
17 that, I do not know, sir.

18 THE CHAIRMAN: All right. Well, I think
19 it's reasonable that if you do resolve that, that the
20 Ministry be obliged to produce somebody who can answer
21 questions on it.

22 MS. MURPHY: We certainly have no
23 difficulty with that. I think we will leave it at
24 that.

25 MS. CRONK: Thank you, sir.

1 THE CHAIRMAN: Shall we mark that as an
2 exhibit?

3 MS. CRONK: Yes.

4 THE CHAIRMAN: Exhibit 941, I believe.

5 DR. OSBORN: 94...?

6 THE CHAIRMAN: One.

7 MS. CRONK: Q. I am sorry, Dr. Osborn, I
8 thought there was a page 2, or are you saving that in
9 case I ask the right question within the next several
10 minutes?

11 Could I see, sir, what you you prepared
12 please as a second page? Could I see what you have
13 prepared?

14 DR. OSBORN: A. Oh, I am sorry. I am
15 sorry. I wasn't sure if the first question was
16 rhetorical.

17 THE CHAIRMAN: Your artwork is so
18 terrific that we want to see more of it.

19 MS. CRONK: Q. Could you explain,
20 please, what this relates to, Dr. Osborn?

21 DR. OSBORN: A. This is the inference of
22 the question you were asking about sampling design.

23 The term and condition 54 could in fact
24 be answered quite categorically with a single number:
25 Second-year survival for the provincial purpose of

1 Ontario in 1986 is 86 per cent. That is one answer and
2 that quite legitimately could be the answer to term and
3 condition 54. But what does that do for anybody?

4 The next step would be to partition it
5 into: Let's tell you what happens spruce versus pine
6 versus jack pine, white pine, red pine. So you now end
7 up with four numbers. Still a legitimate answer but,
8 again, what does that tell you, it will be small.

9 Take it the next step, the difference
10 between bareroot stock and container stock. All I have
11 done is show a progression and the fourth item speaks
12 too: Take the same as 3 and split it geographically;
13 region, district, management unit.

14 Where in the stratification do you stop,
15 where it's useful. And that is the question at the
16 moment MNR has to sort out as to which if any of these,
17 or more, is the way of stratifying how the sample is
18 taken.

19 MS. CRONK: I think that is helpful, sir.
20 Could that be marked as the next exhibit?

21 THE CHAIRMAN: All right. Let's mark the
22 first one 941A and the second one 941B, sir, please.

23 ---EXHIBIT NO. 941A: Hand-drawn diagram of Dr. Osborn
24 re: conditions 43 and 54 of
Exhibit 700.

25 ---EXHIBIT NO. 941B: Hand-drawn diagram of Dr. Osborn

1 depicting inference of sampling
2 design re: condition 54 of Exhibit
700.

3 MS. CRONK: Q. And am I correct, Dr.
4 Osborn, that we should understand 941B, the one you are
5 marking now, as being related to condition 54.

6 DR. OSBORN: A. Yes, yes. This was just
7 an answer to speak to 54.

8 Q. Thank you. That's fine. Just before
9 you leave could you put 941A back up so I can see it.

10 Thank you very much. Thank you.

11 A. Okay.

12 Q. Could I ask you then, Dr. Osborn, if
13 you would please, to go to page 579 of the Panel 16
14 statement of evidence, Exhibit 915.

15 And so that you understand, sir, the
16 purpose for asking these questions, I'm trying to
17 determine for the assistance of the Board and our
18 clients what is different with anything about what is
19 being proposed under conditions 43 and 54 from what
20 occurs today in the field with respect only to survival
21 data. That is what I'm focusing on, all right.

22 Now, with respect to page 579 and 580, am
23 I correct that this document sets out the procedures
24 which apply today -- first of all, this is a document
25 of the Forest Resources Branch, a bulletin of

1 procedures that issued in December of 1988; is that
2 correct?

3 DR. OSBORN: A. Correct.

4 Q. And it deals with silvicultural
5 effectiveness surveys?

6 A. Correct.

7 THE CHAIRMAN: Is that 579 you are on?

8 MS. CRONK: Yes, sir.

9 THE CHAIRMAN: Thank you.

10 MS. CRONK: Q. And am I correct, Dr.
11 Osborn, that it discusses a number of condition surveys
12 one of which are survival counts?

13 DR. OSBORN: A. Correct.

14 Q. Stocking assessments being another?

15 A. Correct.

16 Q. And then a miscellaneous category of
17 other surveys that may be conducted from time to time?

18 A. That's also correct.

19 Q. All right. With respect to all of
20 those condition surveys, am I also correct that the
21 introduction of this procedural bulletin makes it clear
22 that these types of surveys can be conducted at any
23 time in the life of a stand and are not of a mandatory
24 nature?

25 A. That's the words on page 579.

1 Q. All right. And does that accord with
2 your understanding of current procedure with respect to
3 survival counts?

4 A. That is also correct, yes.

5 Q. All right. And the document further
6 indicates that they are conducted when local forest
7 managers consider that some forest stand condition
8 information is required?

9 A. That's also correct.

10 Q. All right. So then, just dealing
11 with survival data and survival condition information,
12 am I correct that, for example with respect to forest
13 management units, that data is collected today by the
14 FMA holders at various times for various purposes?

15 A. As far as I understand, yes.

16 Q. And in some instances second-year
17 survival data is in fact collected; in other instances,
18 it is not?

19 A. The second half of your statement I'm
20 not sure of. I know from casual conversations the
21 first half is true.

22 Q. Mr. Gordon, can you help me? It is
23 correct; is it not, that not all FMA holders routinely
24 collect second-year survival data; in some instances
25 data is collected in the third year after planting, in

1 some instances in the first year after planting, there
2 is a variety of circumstances in the field?

3 MR. GORDON: A. That probably is the
4 case.

5 Q. You don't know, sir?

6 A. No, I don't know what each FMA holder
7 does relative to survival results.

8 Q. All right. Is that not also true
9 with respect to the managers of Crown management units
10 at the moment, survival counts are taken at a variety
11 of times not exclusively at second year?

12 A. That's correct.

13 Q. So that to the extent that condition
14 43 is requiring in mandatory terms second-year survival
15 counts to be undertaken, that is introducing as an
16 obligation something that has is existent today in the
17 field for either Crown management units or FMA units?

18 A. That's correct.

19 Q. All right. And again then I come
20 back to the proposition that I put to Dr. Osborn
21 earlier this morning; and, that is, when the Board
22 comes to assess and to determine whether condition 43
23 should be accepted in the form suggested by the
24 Ministry, it would be relevant and appropriate to
25 consider the usefulness of having second-year survival

1 data in the form suggested by the Ministry in that
2 condition?

3 A. That's correct.

4 Q. All right. And the point of
5 distinction that I am making is simply this: Can we
6 agree that survival data does have a utility of the
7 type described by you in your evidence during Panel 4
8 and again today?

9 A. That's correct.

10 Q. All right. The issue is whether or
11 not second-year survival data should be a mandatory
12 requirement of timber harvesting managers across all
13 unit types. That is the issue; isn't it, based on
14 condition 43 and the discussion we've had?

15 A. That appears to be the issue that you
16 are raising.

17 Q. All right. And I'm suggesting to you
18 that survival data, for example collected at year one,
19 has a utility, collected at year one has a utility; and
20 there is no particular magic to year two. Would you
21 agree with that?

22 A. To a degree.

23 Q. I am sorry, sir, I don't understand
24 that response. It is partially true? You don't think
25 it's true? You don't agree?

1 I'm suggesting to you that third-year
2 survival data is useful in the way that you have
3 suggested survival data is useful, as is second-year
4 data, there is no magic to second-year collection.

5 THE CHAIRMAN: But don't you have to
6 really ascertain what the purpose of the survival
7 numbers are. If your purpose is to allow you
8 sufficient time to replant to remedy something that
9 doesn't survive without waiting to free to grow status
10 and then, in effect, having lost seven or eight years
11 before you go back to rectify something that you might
12 have discovered was wrong in year one or two or three;
13 if that is the purpose, presumably the survival
14 information should be required as early on as you can
15 (a) physically get out and do it and justify that the
16 plant has actually survived or hasn't survived.

17 I mean, there may be degrees of health to
18 a plant that you can't tell until the second year
19 whether or not it has really survived or not. It may
20 not have turned brown and fallen over, totally dead,
21 roots up at the end of the first year.

22 MS. CRONK: Q. Do you agree with that,
23 Mr. Gordon?

24 THE CHAIRMAN: Is that...

25 MR. GORDON: I think the Chairman is

1 pretty well hitting the nail on the head. I suppose
2 the reason why I myself, for example, would be more
3 interested in second-year survival than third-year, is
4 that the trees have been in the ground for one complete
5 summer after planting, they have gone through a full
6 winter and often the trees have a bit of trouble
7 getting through that first winter and, as well, you see
8 how they perform after that first winter.

9 So to me personally second-year survival
10 would be more important than third-year or first-year.

11 THE CHAIRMAN: Because that gives you the
12 jump of the extra year if you have to do something, to
13 replant or to take other measures?

14 MR. GORDON: To a large degree, yes.

15 MS. CRONK: Q. Would you acknowledge
16 this, Mr. Gordon: That other timber managers may have
17 a different perspective on the usefulness of
18 second-year survival data than the one you have just
19 expressed?

20 MR. GORDON: A. I would suppose that
21 possibility exists.

22 Q. All right. And would you also agree
23 with me that conditions can vary in the field from unit
24 to unit, so that what is appropriate for one unit with
25 respect to survival data may not be appropriate for

1 another?

2 A. That is correct.

3 Q. And that was the entire purpose of
4 building into the silvicultural effectiveness
5 procedures bulletin some flexibility and discretion as
6 to when those survival counts are undertaken?

7 A. That's correct.

8 Q. All right. And wouldn't it be a good
9 idea to preserve that same flexibility today
10 recognizing that stand conditions are still different
11 from unit to unit?

12 A. And there still is that flexibility
13 to carry out survival surveys whenever you want.

14 Q. So long as under condition 43 you do
15 it -- that you are required to do as a minimum,
16 second-year survival data. That is what the Ministry
17 is now requiring which has never been required before?

18 A. That's correct.

19 Q. All right. Thank you.

20 MS. CRONK: That's as far as I will take
21 that, sir. You will hear other evidence on that issue.

22 Q. Thank you for that clarification, Dr.
23 Osborn, over lunch.

24 Mr. Tworzyanski, I asked you to look at
25 some numbers over lunch and to confirm some percentages

1 that I suggested to you applied with respect to Table 1
2 at page 37 I believe of the FMA task force report. Did
3 you have an opportunity to do that?

4 MR. TWORZYANSKI: A. Yes I did. It's at
5 the top of page 38 and the numbers that you gave me for
6 the increase in site preparation was 118 per cent, and
7 that was correct; planting and seeding was 80 per cent,
8 and that's correct; and for tending was 148 per cent,
9 and that is also correct.

10 Q. Thank you very much. Could I ask --

11 MS. CRONK: Excuse me. Could I just have
12 one moment, sir?

13 Q. Mr. Gordon, could I ask you to put
14 Exhibit 936 before you, please. That is the costing
15 estimates for the terms and conditions proposed by the
16 Ministry that you discussed this morning.

17 I would ask you to go to page 3. Item
18 No. 3 is timber harvesting data collection, storage and
19 retrieval systems, and you have indicated to the Board
20 that the estimated annual costs of that activity
21 following full implementation of the program is
22 \$3.9-million per year; is that correct?

23 MR. GORDON: A. That's correct, that is
24 our estimate.

25 Q. Is it within that item that the costs

1 of collection, storage and retrieval of second-year
2 survival data is costed?

3 A. Yes.

4 Q. All right. What proportion of the
5 \$3.9-million per annum is attributable to the
6 collection, storage and retrieval of second-year
7 survival data?

8 A. When we prepared those numbers we
9 didn't specifically identify the dollars that were
10 required to carry out that component. What we did do
11 was approach our regions and advise them of the
12 requirements and they provided an overall estimate as
13 to the dollars they required for timber harvesting data
14 collection beyond what they have now.

15 Q. And presumably in so doing each of
16 the respondents to your question took into account the
17 type of data that was going to be asked of them
18 pursuant to the condition?

19 A. That's correct.

20 Q. All right. I would ask you to
21 undertake and subsequently inform me, if you would,
22 please, as to what proportion of the \$3.9-million is
23 attributable to the collection, storage and retrieval
24 of second-year survival data?

25 A. If that is possible, depending on how

1 they worked up the base numbers in the field.

2 Q. All right, thank you. I accept it on
3 that basis. And let me be clear as to what I'm asking.
4 I understand now what your evidence is as to what
5 condition 43 requires with respect to survival data,
6 I'm asking what the price tag is for carrying that out
7 under these terms and conditions. I want to know what
8 it's going to cost?

9 A. For MNR?

10 Q. That's right. Thank you.

11 THE CHAIRMAN: Well, just a minute. Do
12 you want it just for MNR, or do you want it if the end
13 result is, is that the FMA holders are going to have to
14 do those surveys. That is going to be a different
15 cost; is it not?

16 MS. CRONK: Your point is well taken. I
17 would like to hear from the Ministry as to what the
18 Ministry says the cost is for collection, storage and
19 retrieval of that data regardless of who carries it
20 out.

21 THE CHAIRMAN: And they can really only
22 do it if they did it. Your systems, your collection
23 systems, your computer systems and everything might be
24 quite different from theirs?

25 MS. CRONK: That's right. So what they

1 think it will cost.

2 THE CHAIRMAN: Okay.

3 MS. CRONK: Q. Will you do that, Mr.
4 Gordon?

5 MR. GORDON: A. Yes.

6 Q. Thank you very much. Dealing with
7 the same page of Exhibit 936, item No. 4 Growth and
8 Yield, you have indicated to the Board that the
9 estimated annual costs once fully implemented will be
10 \$300,000 per year. Could you undertake to provide me,
11 please, a breakdown as to how that number is
12 calculated?

13 A. Yes.

14 Q. Is that across the entire area of the
15 undertaking, that's an aggregate figure for growth and
16 yield activities across the entirety of the area of the
17 undertaking?

18 A. Yes.

19 Q. Thank you. And can you help me,
20 dealing generally with Exhibit 936, is there any
21 provision made anywhere in this budget - if I can put
22 it that way - these costing estimates, is there any
23 provision made for research and development costs
24 regarding additional herbicides for use in timber
25 management in the area of the undertaking?

1 A. No, there is not.

2 Q. Is there any provision made for the
3 cost of research and development regarding additional
4 chemical insecticides in the area of the undertaking or
5 biological insecticides?

6 A. No, there is not.

7 Q. Should I take from the answers to
8 those two questions that no provision is being made by
9 the Ministry in its proposed future programs for such
10 additional research and development?

11 A. No, you should not.

12 MS. MURPHY: Can we clarify. Is my
13 friend asking about research for products that are not
14 registered federally?

15 MS. CRONK: Additional herbicides was my
16 question and additional insecticides.

17 Q. I should not take that from this?

18 MR. GORDON: A. (nodding negatively)

19 Q. All right. Can you help me, is there
20 anywhere among your terms and conditions as presented
21 to the Board provision for encouraging or undertaking
22 research and development with respect to additional
23 herbicides or additional insecticides, be they chemical
24 or biological?

25 I confess that as I read the terms and

1 conditions I saw nothing that would appear to apply to
2 those items. Am I right in that?

3 A. I think you are correct; and so,
4 therefore, the costing exercise that we went through
5 was to estimate the costs for the draft terms and
6 conditions and since there wasn't a term and condition
7 in the area that we are discussing right now,
8 therefore, that is why there is no cost for that
9 included in the numbers that are in Exhibit 936.

10 Q. All right. And am I correct then
11 that in looking at the terms and conditions that have
12 been proposed to the Board, only to the extent that
13 effectiveness monitoring conditions have been proposed,
14 are there any conditions pertaining to the future use
15 of herbicides or insecticides dealt with in the
16 conditions?

17 Is my question clear?

18 A. Could you maybe rephrase it another
19 way?

20 Q. All right. What I'm suggesting to
21 you is, is that apart from how it may come in under
22 effectiveness monitoring, there is no provision made in
23 the MNR's terms and conditions relating specifically to
24 the future use of pesticides in the area of the
25 undertaking; is that correct?

1 THE CHAIRMAN: Well, it would be included
2 in irectly; will it not, in some of the other headings?

3 MS. CRONK: Well, that is what I would
4 like the witness to help me with, sir. I took that it
5 might be obviously under effectiveness monitoring.

6 Q. Would you like to undertake to review
7 them and inform me of the position of the Ministry on
8 that, Mr. Gordon?

9 MR. GORDON: A. Okay. Yes, I would.
10 Thank you.

11 MS. CRONK: Those are my questions, sir.

12 THE CHAIRMAN: Thank you, Ms. Cronk.

13 MS. CRONK: I am sorry, sir. Just to
14 follow up that.

15 Q. And if there are any terms and
16 conditions that the Ministry perceives to affect those
17 issues, am I right that there has been no budgeting
18 allocation for that except as set out in Exhibit 936?

19 MR. GORDON: A. If there are no terms
20 and conditions in here that relate to the effectiveness
21 monitoring relative to the development of new
22 herbicides?

23 Q. I'm suggesting to you that there is
24 no term and condition as proposed by the Ministry to
25 the Board that speaks to the issue of the future use of

1 pesticides in the area of the undertaking, except as
2 that may fall within the effectiveness monitoring
3 conditions. And you have undertaken to inform me if
4 I'm right about that and to indicate to me if there are
5 any terms and conditions beyond those relating to
6 effectiveness monitoring that are relevant in that
7 regard. Do we understand one another so far?

8 A. Yes.

9 Q. And I'm suggesting to you that apart
10 from what we see in Exhibit 936, there is no budgetary
11 provision being proposed by the Ministry for those
12 purposes? This is it, 936 is what the Ministry is
13 proposing as the full costs of its terms and
14 conditions, there is nothing beyond that and certainly
15 nothing pertaining to pesticides use?

16 A. No. What Exhibit 936 is, and I
17 thought it was fairly clear, is the additional monies
18 MNR needs beyond what we are spending money on right
19 now.

20 And I can't say, for example, within the
21 Ontario Forest Research Institute, our research arm, if
22 they are spending monies right now in this area
23 relative to herbicides and insecticides, I can't speak
24 to that right now; but they may be.

25 But what 936 is our best estimate of the

1 additional dollars that MNR needs beyond what we are
2 spending in those areas to deliver the terms and
3 conditions, and that is all it is.

4 Q. Thank you. That's fine.

5 MS. CRONK: We've had evidence on the
6 other issue, Mr. Chairman. Thank you very much. Those
7 are my questions.

8 THE CHAIRMAN: Thank you.

9 MR. CARY: Ms. Cronk, you asked me before
10 lunch to get some numbers for you and I have those.

11 MS. CRONK: Q. Thank you, Mr. Cary.

12 MR. CARY: A. They are the numbers for
13 the three years and they are numbers of trees set by
14 the provincial cap on nursery stock. In 87-88 the
15 number is 160-million trees; in 88-89, 160-million
16 trees --

17 Q. I am sorry, 160?

18 A. 160.

19 Q. For both sets of years?

20 A. And for the third year 89-90,
21 162-million trees.

22 THE CHAIRMAN: And you said, Mr. Cary,
23 that that was what was produced by both provincial
24 nurseries and private nurseries for use on Crown lands?

25 MR. CARY: That's correct, but it's

1 within the province, so some of those trees are
2 destined for private lands as well.

3 THE CHAIRMAN: Right.

4 MR. CARY: And produced in nurseries
5 outside the area of the undertaking.

6 THE CHAIRMAN: But that is the number for
7 use on Crown lands?

8 MS. CRONK: And private land I think.

9 MR. CARY: It's the use on Crown and
10 private land in the province, in Ontario. And that's
11 how we -- it was a provincial cap that applied to all
12 Crown land and, of course, some of the stock production
13 from our provincial nurseries is destined for planting
14 on private land.

15 MS. CRONK: Q. So that the stock
16 actually available for Crown lands is less than the
17 numbers you have given us?

18 MR. CARY: A. That's correct.

19 Q. Right. And can you assist the Board
20 as to how much less in any of the years indicated?

21 A. Approximately 15-million trees.

22 Q. Less.

23 A. Less for Crown lands.

24 Q. One five?

25 A. One five.

1 Q. In each of those three year periods?

2 A. Approximately.

3 Q. All right. And in respect of
4 planning year 1990-1991, is the Ministry currently
5 planning for the continuation of a cap?

6 A. Yes, it is.

7 Q. At what level?

8 A. 162-million.

9 Q. How far out has the planning of the
10 Ministry gone in this respect, has there been planning
11 for 1991-92?

12 A. I'm not aware of any planning beyond
13 1990-91.

14 Q. All right. You are not aware in the
15 sense that you have enquired and there hasn't been, or
16 you don't know one way or the other?

17 A. I don't know one way or the other.

18 Q. Could you make enquiries for me and
19 provide the Board subsequently with the planning cap
20 currently being planned for to the extent that it has
21 been planned for in the years following 1990?

22 A. Yes, I shall.

23 MS. CRONK: Thank you very much.

24 THE CHAIRMAN: Thank you, Ms. Cronk.

25 ---Discussion off the record

1 THE CHAIRMAN: Ladies and gentlemen, just
2 for everyone's information, Mr. Turkstra is scheduled
3 to arrive at around 4:30 at the airport which means he
4 will get here about 5:00.

5 We are suggesting that we hear evidence
6 until about 5:00 and then deal, Ms. Cronk, with your
7 submissions on that other issue and then, depending on
8 how long that takes -- do you expect to be more than
9 half hour?

10 MS. CRONK: No, sir.

11 THE CHAIRMAN: Then at around 5:30 we
12 will take a break for perhaps a half hour. We would
13 like to confer very briefly with Mr. Turkstra and come
14 back at around 6:00 for the scoping session, and then
15 break for the day subsequent to that, instead of trying
16 to fit a dinner hour in and having to come back later
17 tonight.

18 Do you need any time to set up at this
19 time?

20 MR. LINDGREN: I think we will require a
21 minute or two.

22 THE CHAIRMAN: All right. Why don't we
23 take ten minutes at this time.

24 ---Recess taken at 3:35 p.m.

25 ---On resuming at 3:55 p.m.

1 THE CHAIRMAN: Thank you. Be seated,
2 please.

3 Mr. Lindgren?

4 MR. LINDGREN: Thank you, Mr. Chairman.

5 I would like to begin by filing a package
6 of interrogatories that we posed in this panel. These
7 are interrogatories No. 5, 13, 39, 44, 45, 50 and 51.
8 These have not been previously included in the
9 interrogatories filed by the Ministry.

10 MR. HUFF: (handed)

11 MR. LINDGREN: Is that Exhibit 942, Mr.
12 Chairman?

13 THE CHAIRMAN: That will be Exhibit No.
14 942, that's correct.

15 ---EXHIBIT NO. 942: Forests for Tomorrow Interrogatory
16 Nos. 5, 13, 39, 44, 45, 50 and 51
(Panel 16).

17 CROSS-EXAMINATION BY MR. LINDGREN:

18 Q. Mr. Straight, I believe I will start
19 with you. I don't believe you need a copy of the
20 interrogatories at this time. I would, however, ask
21 that you have the witness statement in front of you and
22 turn to page 424, if you would.

23 MR. STRAIGHT: A. Yes, I have that.

24 Q. I take it, Mr. Straight, that you
25 wrote this document in its entirety?

1 A. It was not a self-effort, it was done
2 with assistance of others but, yes, primary author.

3 Q. Okay. Now, at page 424, the third
4 full paragraph, there is a statement that:

5 "OMNR takes the view that effects and
6 effectiveness monitoring should take
7 place along a continuum. The
8 effectiveness of various provincial
9 guidelines should be addressed through
10 scientific studies which will yield
11 results which are valid and reliable at
12 the provincial level."

13 Now, stopping right there, Mr. Straight.
14 Given the size of the area of the undertaking and given
15 the large number of different and diverse site types
16 and ecosystems, would you agree with me that it is
17 unlikely that provincial truths will be found in the
18 proposed effective monitoring program because of the
19 program's limited scope and scale?

20 A. Provincial truths?

21 Q. That's correct. There is an
22 indication that you will find results that are valid
23 and reliable at the provincial level, I'm translating
24 that as provincial truths.

25 A. I think you will find results which

1 are representative for the kind of environments that you
2 study, and the types of resource values and potential
3 effects for which you are dealing with.

4 One of the reasons we went through the
5 focusing or scoping exercise in the depth that we did
6 was to try and be able to realistically tackle those
7 potential effects considered most significant in a
8 meaningful way.

9 Q. And by scoping you are referring to
10 the ESSA exercise?

11 A. The ESSA exercise and the follow-up
12 technical meetings, technical sessions that followed
13 from that, yes.

14 Q. Perhaps by way of further
15 introduction to this question, Mr. Straight, I would
16 like to refer to some of the testimony previously given
17 by Dr. Allin in a previous panel, Panel 11. This is
18 found at Volume 106 of the transcript, page 17711.

19 THE CHAIRMAN: What volume?

20 MR. LINDGREN: Volume 106.

21 MR. STRAIGHT: And what was that page?

22 MR. LINDGREN: Q. That was page 17711.

23 MR. STRAIGHT: A. Yes.

24 Q. Now, at this portion of the
25 transcript, Mr. Straight, Ms. Swenarchuk had asked Dr.

1 Allin if, in his professional opinion, general
2 scientific truths could be found through the
3 establishment and aggregation of a number of
4 site-specific studies.

5 This is found at the bottom of page
6 17710, and then on to next page. Dr. Allin agrees and
7 he indicates:

8 "Invariably the way scientific
9 information is collected is to do
10 site-specific studies on areas chosen for
11 certain reasons obviously to represent
12 certain conditions that the scientist
13 wants to investigate."

14 And then below that Dr. Allin indicates
15 that:

16 "The studies will almost of necessity be
17 site-specific but with careful selection
18 of site conditions choosing
19 representative conditions for whatever it
20 is you want to investigate, it is
21 possible to generalize from those
22 site-specific investigations to a wider
23 variety of conditions. I mean, I think
24 one could make some reasonable inferences
25 from site to another."

1 And then the next question from Ms.

2 Swenarchuk is:

3 "Yes. And would you agree that the
4 degree to which we are able to generalize
5 varies tremendously and is particularly
6 tied to the extent to which any
7 particular study area is representative
8 of large similar areas?"

9 And again Dr. Allin agrees:

10 "Yes, that would be true."

11 Now, in light of these statements, Mr.
12 Straight, isn't it true that the intensity and the
13 scale of the effectiveness monitoring program has to be
14 substantially increased in order to determine these
15 provincial truths?

16 MS. MURPHY: Is this with respect to any
17 particular part of the effectiveness monitoring
18 program? I'm just...

19 MR. LINDGREN: I am prepared to offer an
20 example, but I am wondering if he can offer a general
21 comment on the validity of that statement. Does he
22 agree or not agree that the effectiveness monitoring
23 program has to be substantially increased in both scale
24 and scope in order to derive some of these approval
25 truths?

1 MR. STRAIGHT: You are really looking at
2 somewhat of a different nature to each of the three --
3 the provincial effects and effectiveness monitoring
4 programs that are being undertaken, and probably the --
5 and basically in all cases those from a resource, and
6 from my perspective as a general resource manager, our
7 essential purpose was to try and focus those issues
8 generally which we could deal with into a meaningful
9 experimental design and look, in many cases, for
10 example in the fisheries program, some of the main
11 considerations in selecting the types of situations we
12 wanted to look at dealt with selecting those kinds of
13 environments that we felt were potentially most at risk
14 so that we could look at situations that would most
15 likely provide us with potential effects and most
16 likely allow us to be able to understand the dynamics
17 of the resource systems in those particular cases.

18 When you look at -- and, similarly, when
19 we looked at, for example, the tourism design to that
20 program, again it's based in many cases in looking at a
21 cross-section of the types of operations which are in
22 involved, it's looking at distributing those samples
23 across northern Ontario, northwest and northeast, to
24 pick up any geographic difference and it's -- in terms
25 of some of the studies, for example the fisheries

1 management part of the tourism study which looked at
2 where you might do resource management studies relative
3 to creel surveys, those again were based on a greatest
4 risk situation. So that, again, we could be in a good
5 position to be able to document effects and to draw
6 inferences from it. I don't know, jim -- in terms of
7 sampling design, Dr. MacLean, is there anything else
8 that we should say here?

9 MR. LINDGREN: Q. Well, perhaps I can
10 ask the questions of Dr. MacLean. In the first part of
11 your answer, Mr. Straight, you did refer to the
12 fisheries program. Perhaps it would be appropriate for
13 me to perhaps illustrate our concerns by referring to
14 that program.

15 Dr. MacLean, perhaps I can ask you to
16 turn to page 497 of the witness statement. Do you have
17 that statement or that page?

18 DR. MacLEAN: A. Yes, I have that page.

19 Q. Here there is an indication that
20 under the stringency approach a single study area will
21 likely consist of four lakes. Under the heading of
22 replication in the middle of the page, the first
23 paragraph reads:

24 "Ideally the study should be repeated on
25 a number of systems representing

1 different lake types and forest/soil
2 types. In addition, the study needs to
3 be conducted on both lakes and streams.
4 Given the expected cost of an individual
5 study (one set of four lakes) this level
6 of replication is impractical. At a
7 minimum, however, it would be valuable to
8 repeat the study on one cold water lake
9 set, one warm water lake set and one cold
10 water stream set."

11 Now, leaving aside any cost implications
12 for the moment, Dr. MacLean, would you agree that as a
13 scientist that the replication of the study results
14 would be of fundamental importance here in order to
15 extrapolate the results across the area of the
16 undertaking?

17 DR. MacLEAN: A. I guess in answer to
18 that what I would say is that there are two things we
19 would like to do, and the first of those is to choose
20 systems that are representative of a broader set,
21 conduct experiments on those and by being careful in
22 our initial choice, be able to extrapolate to the whole
23 set.

24 The sort of replication that is discussed
25 in the first sentence in that section is an ideal one.

1 Certainly we would like to have or love to have all of
2 the money necessary to answer all of the possible
3 questions we can ask. That is not practical in our
4 view and, in setting priorities for what it is we would
5 like to do, I think what we have done is advocate an
6 approach to choosing representative systems and
7 extrapolating from that.

8 Q. When you say practical, do you mean
9 economic or uneconomic?

10 A. No, I think it's beyond economic in
11 terms of practicality, in terms of managing and
12 learning and understanding from a set of experimental
13 study.

14 Q. Well, I think my original question,
15 Dr. MacLean, was whether or not you agree as a
16 scientist that it would be desirable to repeat the
17 study on the greatest possible number of lake types or
18 stream types?

19 A. It would be ideal, as said there.

20 Q. Would you agree that from a
21 scientific perspective it would be preferable to
22 increase the number of repeat studies beyond one cold
23 water lake set and one warm water lake set and one cold
24 water stream set?

25 A. It would be...? I am sorry.

1 Q. Would it be desirable to move beyond
2 that minimum number of stream sets and lake water sets?

3 A. Given the levels of our uncertainty,
4 I'm not at all sure that that is true, I'm not at all
5 sure that it would be desirable to move to this ideal
6 at this time.

7 Q. Well, what do you mean by our current
8 level of uncertainty?

9 A. Our current level of uncertainty of
10 understanding of effects.

11 Q. Wouldn't that make it even more
12 incumbent to expand the replication study sets?

13 A. I guess my sense of it is that we are
14 not at all certain about many of the things that are
15 discussed in, for instance, the first sentence,
16 different lake types and forest soil types, and whether
17 those are in fact important in terms of causing
18 differences between systems in how they might respond
19 to a particular forest management practice.

20 And what we are trying to do is get at
21 least some information on lakes under treatments that
22 allow for the expression of those effects to learn
23 something that we can extrapolate from as a starting
24 point. I'm not being very clear, but...

25 Q. Well, perhaps I can just ask you the

1 question that I started with Mr. Straight; and, that
2 is: Would you agree that unless a number of
3 replication studies are substantially increased it is
4 going to be extremely difficult to interpret and
5 extrapolate the results from this aquatic study or the
6 other monitoring studies that have been proposed?

7 A. No, I would not agree with that.

8 Q. Okay. Thank you. You did make some
9 reference to cost factors, and you have indicated why
10 this may limit the number of studies that may be done.

11 A. Mm-hmm.

12 Q. Has the Ministry identified any
13 representative districts or regions that will receive
14 the full integrated monitoring package; that is, a
15 region or a district that will have elements of all
16 three monitoring programs?

17 A. No, we have not done that. The
18 current approach is to developing detailed experimental
19 plans for all three of the effectiveness --
20 effects/effectiveness monitoring programs. Certainly
21 we are looking at study sites for each of those, and
22 where it's possible to integrate, we will, but it's not
23 something that we see as necessary.

24 Q. Okay, thank you.

25 Mr. Straight, returning to you. Could I

1 ask you to turn to page 432 of the witness statement.

2 MR. STRAIGHT: A. Yes, I have it.

3 Q. Okay. I'm looking at the third full
4 paragraph, the first two lines read as follows:

5 "The situation may be more complicated if
6 there was a prescription in place that
7 was intended to prevent the effect and
8 the prescription was followed. It may be
9 that a prescription which is intended to
10 protect a certain value is successful in
11 most cases but proves to be consistently
12 unsuccessful in a certain set of local
13 conditions."

14 Now, picking up on some of the questions
15 posed by Mr. Cassidy earlier this morning, if the
16 effectiveness studies show that prescriptions based on
17 the provincial guidelines are generally adequate but
18 that they may prove to be consistently ineffective or
19 even harmful in certain districts or management units,
20 will these guidelines continue to be applied or used in
21 those areas?

22 A. You are directing your question to
23 results of the provincial effects and effectiveness
24 monitoring program?

25 Q. That's correct.

1 A. And this is not the issue that is
2 dealt with on page 432, which deals with the local
3 program.

4 Q. That's right.

5 A. If you noticed in the provincial
6 program that indeed that there were situations
7 occurring and adverse effects you would feed that
8 information through that provincial committee structure
9 that was discussed before and deal with the results of
10 the program on that particular basis.

11 Q. And presumably that may or may not
12 result in an amendment to the guideline.

13 A. That may or may not result in an
14 amendment.

15 Q. Now, in situations where the
16 guideline itself is sound but may be inappropriate in a
17 particular local set of situations or conditions, would
18 the Ministry prepare a directive or some sort of
19 bulletin indicating that it should not be applied in
20 that set of circumstances?

21 A. Now, you are talking about amendments
22 to the guidelines which would follow a formal basis.

23 Q. Well, short of a formal amendment to
24 the guidelines.

25 A. That is what you are talking -- what

1 we are talking, guidelines would be formally amended in
2 that particular mechanism that was discussed earlier in
3 the committee structure.

4 What this particular situation here deals
5 with is that if the local district manager observes
6 instances where a prescription is -- which is being
7 complied with is not meeting the results that he had
8 hoped, then he would consider making changes to it.

9 And one example that I alluded to earlier
10 was the situation where commonly in my experience or
11 probably one of the more frequent types of examples
12 where that particular situation can come up would be
13 one involved with tourism values, and I think I cited
14 an example where you may find that attempts to render
15 roads impassable after operations to protect remoteness
16 and using the tourism guidelines that that particular
17 situation was not working, that you would look at
18 changing that in future prescriptions and, in doing so
19 though, relative to the way those particular guidelines
20 are worded, you would still be consistent with the
21 intent of the guideline.

22 Q. Perhaps on this point I can refer you
23 to page 424 then which deals with the amendment to
24 guidelines.

25 Now, in the fourth full paragraph, Mr.

1 Straight, there is an indication that:

2 "Over time knowledge of effects and
3 effectiveness will increase based on
4 scientific studies in Ontario and
5 elsewhere, as well as the experience
6 gained at the local levels. Consequently
7 existing approval guidelines may be
8 revised and new ones may be developed."

9 Now, as you are aware, Mr. Straight, back
10 in Panel 10 we heard of a significant change in the
11 moose habitat Guidelines in that cut blocks could be
12 double in size to 260 hectares before special approval
13 requirements kick in.

14 MS. MURPHY: Actually that evidence was
15 given by Dr. Euler and he is on the panel and probably
16 more familiar with that fact.

17 MR. LINDGREN: Q. I do have one question
18 for Dr. Euler on that change and that is: Was that
19 particular change based on scientific studies such as
20 the ones contemplated by that paragraph?

21 DR. EULER: A. Let me just clear up one
22 thing, that wasn't a change from the guidelines, that
23 was a change in how the guidelines were implemented.

24 Q. Okay, fair enough. And was that
25 based on a scientific study that indicated the need for

1 a change in the application of the guideline?

2 A. No.

3 Q. What prompted that change?

4 MS. MURPHY: I believe there was a great
5 deal of evidence about that led already.

6 THE CHAIRMAN: You did cover that, Mr.
7 Lindgren, do you want to --

8 MR. LINDGREN: That was correct. I had
9 assumes that would have been based on scientific
10 evidence and I was prepared to go with that, but if
11 that is not the case, then I'm content to move on.

12 Q. In your evidence in this panel, Mr.
13 Straight, or actually it was Mr. Gordon's evidence, you
14 spoke of stakeholder committees that will oversee the
15 monitoring programs and in particular, Mr. Gordon, you
16 advised us that one of the functions of stakeholder
17 committees was to make recommendations to the steering
18 committee on guideline changes; is that correct?

19 MR. GORDON: A. Would you ask your
20 question again, please?

21 Q. You advised us earlier, Mr. Gordon,
22 that one of the functions of the stakeholder committee
23 is to make recommendations on possible changes or
24 amendments to existing guidelines?

25 A. That's correct.

1 Q. And I take it then, Mr. Gordon, that
2 this means that the stakeholder committee will be
3 making recommendations or could be making
4 recommendations regarding the revision of existing
5 guidelines or the establishment of new guidelines?

6 A. Yeah. The intent was they will be
7 participating through that committee structure in
8 reviewing the results from those scientific studies
9 that have been talked about in this panel and providing
10 their advice to the steering committee as to what
11 changes in the guidelines that relate to those studies
12 are necessary.

13 Q. And leaving aside the issue of
14 guidelines, will the stakeholder committee be looking
15 at or would the stakeholder committee be making
16 recommendations in relation to the actual use or
17 application of those guidelines, such as the change in
18 the application of the moose habitat guidelines that we
19 spoke of earlier?

20 A. Where appropriate and where they feel
21 it is important to do so, we would welcome such
22 comments. I can't say that they will, it will be up to
23 the stakeholder committee, and we will be doing things
24 to try to facilitate such things to happen.

25 Q. I think I will pose my next question

1 to both Dr. Euler and Mr. Gordon; and, that is: Are
2 there any MNR proposals that are currently being
3 contemplated or put in place that would revise existing
4 guidelines or would revise any of the policies or
5 procedures or directives related to those guidelines?

6 Dr. Euler, perhaps you could start.

7 DR. EULER: A. I would be happy to
8 start. Let's go over that question again, because I'm
9 not sure that I understand it and I would like to make
10 sure I understand it so that I answer it correctly and
11 carefully.

12 Q. My question was this, Dr. Euler: Are
13 there any other - and when I say any other, I was
14 referring to the change in the moose habitat
15 application document - are there any other proposals
16 that are being contemplated or put in place by the
17 Ministry that would either change existing guidelines
18 or would revise the policies, procedures, directives
19 and so on that are related to the application of or use
20 of those guidelines?

21 A. Well, yes, there are.

22 Q. And could you identify a few for us?

23 A. Well, sure. The red-shouldered hawk
24 guidelines, for example, we are working on them almost
25 all the time to try and improve them. We have some

1 projects underway where we are trying to assess the
2 effectiveness of them, we are continually reviewing the
3 literature on them to try to make sure that they're the
4 very best available. So that is an example of one.

5 We are right in the midst of a series of
6 discussions about the deer habitat guidelines and
7 bringing them into a final stage of approval. So there
8 are conversations and discussions going on about those
9 guidelines all the time.

10 Well, those two jump to my mind first.
11 On some reflection I might be able to think of
12 something else. They would be very similar to those
13 two.

14 THE CHAIRMAN: Dr. Euler, is it the case
15 that whenever there is ongoing studies or ongoing
16 suggested improvements you don't necessarily rewrite
17 the guidelines or put in a formal amendment at a
18 particular point in time, you may save some up to do a
19 general revision of the guidelines at a particular
20 point in time, even though when you have decided that
21 there should be a change in practice the directive
22 might go out to the field that you are now to apply the
23 guidelines using the different approach if you decide
24 on one?

25 DR. EULER: Yes, that's right, Mr.

1 Chairman. You can't change the guidelines every time
2 you learn one new thing, and you have to sort of
3 accumulate a bit, make changes cognizant of the fact
4 that you have got to implement things in the real
5 world. And so there is a certain period of time that
6 has to go by before you can really do a good revision.

7 MR. LINDGREN: Q. Mr. Gordon, do you
8 have any examples that spring immediately to mind?

9 MR. GORDON: A. The only thing is,
10 coming at it from a slightly different angle, I believe
11 Mr. McNicol has a role in training relative to the
12 implementation of the guidelines, so because of his job
13 there may be changes in the implementation of the
14 guidelines to ensure consistency, but I can't really go
15 beyond that.

16 Q. Mr. Gordon, is it the Ministry's
17 intention that no further changes to existing
18 guidelines or related policies and procedures will
19 occur without consultation with, or consultation of the
20 stakeholder committee that you have referred to?

21 MS. MURPHY: Well, let's try to be clear
22 about what we are talking about. You recall, I
23 mentioned to you earlier, Exhibit 528. That exhibit
24 lists a large number of documents that have some level
25 of policy or guideline or whatever status.

1 I mean, this is just a list, it has in it
2 all kinds of things that are procedures and so forth.
3 If my friend can explain exactly what kinds of
4 documents, which policies, which guidelines he's
5 referring to, that might be of assistance, but you will
6 appreciate these are many, many pages of documents.

7 MR. LINDGREN: Well, Mr. Chairman, we are
8 concerned that a change from the application of a
9 provincial guideline may change -- may occur without
10 any formal public input or notice such as occurred with
11 the moose habitat guidelines.

12 Mr. Gordon has spoken very eloquently of
13 the functions of the new stakeholder committee. If
14 that committee is to be meaningful, if it's going to be
15 a meaningful process, surely they should be consulted
16 before any further changes to existing guidelines or
17 application of those guidelines are contemplated by the
18 Ministry, and that's the question I put to Mr. Gordon.

19 MS. MURPHY: Fair enough. I'm not trying
20 to argue. My friend is now saying, referring to
21 provincial guidelines which has a meaning here and,
22 that is fine. I think the witnesses can answer in that
23 context.

24 THE CHAIRMAN: Can we have a short answer
25 to that, Mr. Gordon?

1 MR. GORDON: Could I have the question
2 again, please?

3 MR. LINDGREN: Q. Certainly. Is it the
4 Ministry's intention that no further changes to
5 existing guidelines --

6 THE CHAIRMAN: Provincial guidelines.

7 MR. LINDGREN: Q. Provincial
8 guidelines - thank you, Mr. Chairman - will occur
9 without formal consultation with the stakeholder
10 committee?

11 MR. GORDON: A. Yes, that is the intent.

12 Q. Thank you.

13 MS. MURPHY: I would also just refer you,
14 there was evidence in Panel 1 about how those kinds of
15 guidelines have developed and it talked about
16 stakeholder review outside that stakeholder committee
17 as well. I just caution you not to forget there is an
18 additional step that was discussed there.

19 MR. LINDGREN: Q. If that is the
20 Ministry's intention, Mr. Gordon, would you have any
21 problems if that was expressly incorporated in the form
22 of a term and condition?

23 MR. GORDON: A. That being that beyond
24 going through a review in the stakeholder committee
25 that where we are proposing to amend a provincial

1 guideline that it also go to other parties outside of
2 the stakeholder committee, is that what you are asking
3 me?

4 Q. No, that the stakeholder committee be
5 consulted on such a change or before such a change
6 occurs?

7 A. Yes, yes, but with the one
8 understanding that - and nothing comes to mind - but
9 there may be a real reason for moving fairly quickly to
10 correct something that isn't covered with the guideline
11 and it just may not be possible to consult the
12 stakeholder committee although there will be every
13 effort made to do so but, you know, it just shouldn't
14 be 100 per cent one way for real reasons.

15 Q. Do you have any examples in mind, Mr.
16 Gordon?

17 A. Not at all.

18 Q. Dr. Euler, do you have page 424 of
19 the witness statement before you?

20 DR. EULER: A. Yes, I do.

21 Q. Earlier I read from the first portion
22 of the third full paragraph. I would now like to ask
23 your comments on the second -- or the last sentence of
24 that paragraph which reads as follows:

25 "On the other hand, it is appropriate to

1 assess effects and effectiveness of
2 measures in individual timber management
3 plans at the local level normally through
4 observations or special initiatives of
5 local OMNR staff and, where appropriate,
6 through effective stakeholders."

7 Dr. Euler, would you agree with me that
8 not only is this form of monitoring appropriate at the
9 local level but, in fact, is extremely important to
10 ensure that measures in the timber management plans are
11 not resulting in adverse environmental effects?

12 A. Yes.

13 Q. Would you also agree that effects and
14 effectiveness monitoring at the local level is
15 particularly important in the context of wildlife and
16 other non-timber values?

17 A. Yes, it's very important.

18 Q. And would you agree that this form of
19 local monitoring should be mandatory for all timber
20 management plans?

21 A. Well, I'm not sure. I'm not sure of
22 all the implications of that. When you say mandatory
23 for all timber management plans, and it raises a number
24 of questions like: Who should do it, who should pay
25 for it, and I wouldn't want to agree with that unless I

1 had some sense of the implications behind it.

2 Q. Perhaps we can pursue the
3 particulars, Dr. Euler. First, perhaps I can ask you a
4 more specific question, would you agree that the
5 purpose and content for local monitoring plans should
6 be spelled out not only for AOCs but for areas of
7 normal operation and that this should be expressly
8 spelled out in the timber management plan for the
9 assistance of the public and for the person or persons
10 who will be carrying out this monitoring function?

11 A. Well, I'm not sure that it has to be
12 in the timber management plan. See, that becomes a
13 question of: Where you put it, in what bureaucratic
14 device do you put it in.

15 And I don't really think it matters a
16 great deal where it is, as long as there is a plan and
17 it exists and persons can follow it and understand.

18 THE CHAIRMAN: How are you going to place
19 a positive obligation on members of the public to
20 monitor in any specific situation? They may well want
21 to, but how are you going to design something that
22 says: You must monitor in local situations all of
23 these activities?

24 MR. LINDGREN: I'm not sure I catch your
25 question. Are you asking, Mr. Chairman, how you say to

1 the public, monitor?

2 THE CHAIRMAN: Yes.

3 MR. LINDGREN: I don't think that is the
4 thrust of this question. The question is: How do you
5 tell the people who are going to be carrying out the
6 monitoring; i.e., MNR staff.

7 Q. I'm asking, Dr. Euler, would it be
8 advisable to expressly spell out what they are going to
9 do, where they are going to do it, when they are going
10 to do it, and how they are going to do it.

11 DR. EULER: A. Okay. But in your
12 question you indicated whether I thought that should be
13 in the timber management plan, and that is a key point
14 for me.

15 Q. That's right. And we have heard
16 evidence, for example, that the AOC monitoring plan
17 will be part of the plan, we'll find it in the AOC
18 binder?

19 A. Mm-hmm. Well, that is fine. Now,
20 you see, in the context that we are talking -0 I think
21 we are talking about part of our effectiveness
22 monitoring program - that is where I thought we were,
23 okay, and I agree, we need a good program and a good
24 plan, but I'm just not at all sure that that should be
25 in the timber management plan.

1 And we are busy developing this
2 monitoring program right now so that each person who
3 engages in it will know what to do and how it fits.

4 Q. If it's not currently in the timber
5 management plan, Dr. Euler, where would we find
6 information on the monitoring program for a timber
7 management plan other than the AOC package that I have
8 just referred to earlier?

9 MR. GORDON: A. Maybe I can be of some
10 assistance because I don't think Dr. Euler has
11 participated directly in the timber management planning
12 process recently.

13 What we have said is, for areas of
14 concern we will outline the compliance monitoring
15 program or plan for AOCs and, as far as other direction
16 for compliance monitoring in normal operating areas, we
17 will provide that through a policy with associated
18 bulletins.

19 And that is the only way I believe that
20 we can deliver on this, because we must maintain some
21 flexibility in here to carry out a compliance
22 monitoring program. We cannot spell out all the
23 details five, six years in advance, but we are willing
24 to work at spelling out some details for areas of
25 concern; that is, areas where we think that there is a

1 significant value that may or may not be at risk.

2 Q. Are you aware, Dr. Euler or Mr.
3 Gordon, that particulars of monitoring plans are
4 expressly required by regulation in forest management
5 plans that are prepared in the United States?

6 MS. MURPHY: Are you planning to lead
7 evidence on that? Are you prepared to prove that?

8 MR. LINDGREN: I have previously
9 distributed excerpts from American plans in which the
10 monitoring requirements --

11 THE CHAIRMAN: Mr. Lindgren, there is a
12 general rule, as you are well aware, that if you are
13 going to ask questions of a witness and put to him
14 something that occurs elsewhere and ask his opinion on
15 it, that you are going to have to establish that fact
16 through your own case that in fact that does occur.

17 MR. LINDGREN: That is the general rule,
18 Mr. Chairman. However, it was my understanding that
19 provided that the documentation is relevant and it has
20 some probative value before this Board and the witness
21 has had an opportunity to review it, then certainly his
22 opinion as to what may or may not be in that plan,
23 certainly those kinds of questions can be led.

24 MS. MURPHY: Well, just before we get to
25 whether the questions can be led, I would like to point

1 out to you, my friend is referring to some
2 documentation that he provided to me and asked me to
3 provide to these witnesses at about two o'clock this
4 afternoon, just before we broke, and as I understand
5 it, the documentation he's referring to are some pieces
6 from some American plan and some pieces from some
7 American statute as I understand it.

8 I certainly haven't had a chance to look
9 at it and I'm certain that the witnesses haven't --
10 there is no chance that they have looked at this in
11 order to even respond to the question on the basis of
12 any documentation they have been given at this point.

13 MR. LINDGREN: Mr. Chairman, if I can
14 just inject an air of practicality into this matter.
15 It was not possible this morning to provide copies to
16 the witnesses or to my friend and, in any event, that
17 would have served no purpose given that these gentlemen
18 were presenting evidence at the time.

19 So I did attempt to give them the
20 documentation at the earliest possible convenience so
21 that they would have at least a chance to look at the
22 documentation.

23 Now, if I could add just one further
24 question, and then I will invite your ruling on its
25 appropriateness.

1 Q. But, Dr. Euler, in Panel 10 you did
2 speak of the wildlife management strategies that are
3 used elsewhere and, in particular, you did refer to the
4 management indicator species that is used in the United
5 States and you also spoke of the Guild or multi-species
6 management system that has been used in the United
7 States; is that correct?

8 DR. EULER: A. Yes.

9 Q. And I take it then that you do have
10 some familiarity with those systems as they are
11 currently practised in those jurisdictions?

12 A. Yes.

13 MS. MURPHY: Well, let's go back to what
14 the original question was about, something to do with
15 the regulations and something that these people are
16 supposed to respond to on the basis of, in fairness,
17 material that was given to them a very short time ago.

18 MR. LINDGREN: Mr. Chairman, the next
19 exhibit...

20 THE CHAIRMAN: Well, I think we are
21 wasting too much time over something, that if the
22 witnesses have not had an opportunity to review the
23 material, and I take it, Mr. Gordon, you have not had
24 the opportunity to review this material?

25 MR. GORDON: That's correct.

1 THE CHAIRMAN: Is that the case? Then
2 they do not have to and will not be required to answer
3 questions on it until they have had such an
4 opportunity; secondly, if you are going to put some
5 information to them and you are going to put a
6 proposition to them and invite their comment on it and
7 it refers to something else in some other jurisdiction,
8 I think there is an obligation on your part to
9 establish those facts at some point.

10 MR. LINDGREN: Mr. Chairman, the very
11 next exhibit I was intending to introduce is in fact an
12 excerpt of the regulation that applies to the National
13 Forest Service in the United States.

14 THE CHAIRMAN: Well, have they had an
15 opportunity to see that?

16 MR. LINDGREN: Pardon me?

17 THE CHAIRMAN: Have they had an
18 opportunity...

19 MR. LINDGREN: This document has been
20 distributed to them. It's not my intention -- this is
21 obviously a large document, perhaps I can explain it.

22 As you may recall, Mr. Chairman, in an
23 earlier panel Ms. Swenarchuk did introduce an excerpt
24 from this very same regulation, that was the one
25 dealing with legislated clearcut sizes.

1 It is my intention to refer to perhaps
2 two or three paragraphs of this document, but the reason
3 why I put the whole package together was that I thought
4 it would be advisable for the other parties and for the
5 Board to have this because we intend to make reference
6 to it again in later portions of this hearing, so...

7 THE CHAIRMAN: Through your own case?

8 MR. LINDGREN: Well, perhaps during our
9 own case and certainly during Panel 17 as well.

10 THE CHAIRMAN: All right. Ms. Murphy, if
11 the witnesses feel comfortable looking at the two or
12 three line statements in the regulation that Mr.
13 Lindgren wants to refer to and wish to respond, do you
14 see any objection of them responding in that fashion?

15 MS. MURPHY: I see no objection in
16 providing the information and having one of these
17 people ask if they can respond. I'm just advising you
18 that their ability to respond at this point in time,
19 even as a practical matter, let alone anything else,
20 would be pretty limited based on...

21 THE CHAIRMAN: All right. If you want to
22 do it in that fashion, Mr. Lindgren, put it to them,
23 put the specific questions to them and then we will see
24 if they wish to respond. If they want more time to
25 review the whole document, then you will have to wait.

1 MR. LINDGREN: That is certainly fair,
2 Mr. Chairman.

3 Mr. Chairman, for the purposes of the
4 record, I should indicate that this is an extract from
5 the Code of Federal Regulations in the United States
6 and, in fact, it is the same regulation from which
7 Exhibit 427 has been taken earlier, that was the
8 legislative clearcut size provision.

9 THE CHAIRMAN: All right. Exhibit 943.

10 MR. LINDGREN: And the proper citation,
11 sir, is 36 CFR Chapter 2, Part 219.

12 THE CHAIRMAN: Very well.

13 ---EXHIBIT NO. 943: Extract from Forest Service, USDA,
14 36 CFR, Chapter 2, Part 219.

15 MS. CRONK: Sorry to interrupt my friend,
16 Mr. Chairman. I was not here, at least if I was I
17 don't now recall, what the description was for Exhibit
18 427. Can I just understand. Is the suggestion that
19 this is an extract from a federal statute in the United
20 States on a stated statute?

21 MR. LINDGREN: It is an extract from a
22 federal regulation promulgated under a federal statute.

23 MS. CRONK: That is fine. What is the
24 statute, Mr. Chairman?

25 MR. LINDGREN: The National Forest

1 Management Act.

2 MS. CRONK: Thank you.

3 MS. MURPHY: Is this all of the
4 regulation?

5 MR. LINDGREN: This is all of Part 219.

6 Q. Now, Dr. Euler, you have indicated
7 that you are generally familiar with the management
8 indicator species concept that is currently practiced
9 in some American jurisdictions.

10 DR. EULER: A. Yes, I am.

11 Q. Perhaps before we turn to the
12 management indicator species, Dr. Euler. Mr. Straight,
13 this was a document that was provided to you. Have you
14 had an opportunity to look at the document?

15 MR. STRAIGHT: A. No, I haven't.

16 Q. Well, in the interest of fairness, if
17 you cannot answer the questions that I intend to pose,
18 which are not in the document but in relation to the
19 evidence you gave, please let me know and I'm content
20 to stand those questions down to give you an
21 opportunity to read the document in question.

22 But I would start by asking you to turn
23 to page 46 of this exhibit and, in particular, I'm
24 interested in section 219.11 which is entitled: Forest
25 Plan Content.

1 That provision indicates that the forest
2 plan shall include the following items, and under
3 paragraph (d):

4 "Monitoring and evaluation requirements
5 that will provide a basis for a periodic
6 determination and evaluation of the
7 effects of management practices."

8 MS. MURPHY: Are you asking him to read
9 if that is what it says?

10 MR. LINDGREN: Q. Can you confirm that
11 that is in fact what is provided?

12 THE CHAIRMAN: We will take judicial
13 notice of the fact that that is what it says.

14 MR. LINDGREN: Okay, thank you.

15 Q. Then turning on to the next page, Mr.
16 Straight, page 47.

17 MR. STRAIGHT: A. Yes.

18 Q. Left-hand column at the top there is
19 a paragraph 6(d) sets out various inventory and
20 information collection requirements. And without going
21 through all of this, can you confirm that this
22 provision simply requires each forest supervisor to --

23 THE CHAIRMAN: Well, Mr. Lindgren, he
24 can't possibly confirm that without going through it
25 all. He has indicated he hasn't read it.

1 MR. STRAIGHT: We are also into a
2 different section; are we not? You went from--

3 MR. LINDGREN: No.

4 MR. STRAIGHT: --219.11 to 219.12, right.

5 THE CHAIRMAN: I would suggest in the
6 interest of expediting this that this panel be given an
7 opportunity to review this document before any further
8 questions be put.

9 MR. LINDGREN: That is appropriate, Mr.
10 Chairman. Perhaps I can introduce two other documents
11 that have been produced to the witnesses previously and
12 give them an opportunity to review that as well.

13 MR. STRAIGHT: Excuse me, Mr. Chairman.
14 I should add here that this is the first time that I
15 have seen this. My only personal request is, is
16 that if rather than reviewing the whole document, if
17 there are some specific parts of it as well that Mr.
18 Lindgren is interested in, perhaps he could make those
19 available to us as well.

20 THE CHAIRMAN: Can you indicate what
21 sections the witnesses should read?

22 MR. LINDGREN: I can certainly do that;
23 however, I do think that we could proceed, Mr.
24 Chairman. My purpose here is only to indicate that
25 some of the requirements that are expressly laid out

1 here are not currently required in Ontario. My purpose
2 then is to ask Mr. Straight why and --

3 THE CHAIRMAN: Well, is that surprising?

4 MR. LINDGREN: No, no.

5 MS. MURPHY: How is he going to indicate
6 why if he doesn't know why they are in the document.

7 THE CHAIRMAN: I mean surely, Mr.
8 Lindgren, there must be all kinds of provisions in all
9 kinds of jurisdictions about all kinds of matters that
10 aren't necessarily exactly duplicated in Ontario for a
11 variety of reasons.

12 MR. LINDGREN: Well, when I say why they
13 are not here, the next question is: Would it be
14 feasible or advisable to do that here in Ontario?

15 THE CHAIRMAN: Well, would not the
16 appropriate way to go about that kind of questioning
17 is, firstly, to allow the witnesses to have an
18 opportunity to review the documentation, No. 1; No. 2,
19 pose specific questions to the witnesses relevant to a
20 specific provision and say: Is it feasible for this
21 provision to be incorporated in the Ontario context
22 and solicit their opinion on that.

23 MR. LINDGREN: That is precisely my
24 intention throughout this process, Mr. Chairman.

25 THE CHAIRMAN: Well, I think firstly they

1 are going to have to have an opportunity to read it.
2 So why don't you indicate at this point what sections
3 you would like them to read.

4 MR. LINDGREN: Q. Okay. Mr. Straight --

5 MR. STRAIGHT: A. Yes.

6 Q. Could I ask you to kindly read.

7 THE CHAIRMAN: And I take it you are
8 dealing with Mr. Straight on this as opposed to the
9 other witnesses?

10 MR. LINDGREN: Mr. Straight and Dr.
11 Euler. I will identify the portions that Dr. Euler
12 should familiarize himself with.

13 THE CHAIRMAN: Okay.

14 DR. EULER: Could we have another copy
15 of. Bill and I are sharing this one and it would be
16 most helpful if we could have another copy.

17 MR. LINDGREN: We did give two copies of
18 this to the witnesses.

19 MS. MURPHY: We will look after that.

20 MR. HUFF: All under control. (handed)

21 MR. LINDGREN: Mr. Chairman, in the
22 interest of the time, it may be advisable for me to do
23 that after the conclusion of today's proceedings I will
24 approach the witnesses and identify the relevant
25 passages for them.

1 MS. MURPHY: That is fine.

2 THE CHAIRMAN: Well, I think the other
3 counsel may want to avail themselves of the opportunity
4 overnight to look at that as well.

5 MR. LINDGREN: That is fair.

6 THE CHAIRMAN: So you will do that for
7 other counsel as well.

8 MR. LINDGREN: That's right. And for
9 that reason I think that I should distribute the other
10 two documents that I intend to refer to in relation to
11 this.

12 MR. HUFF: (handed)

13 MR. GORDON: Mr. Chairman, could I make a
14 comment. I just don't want to slow things down
15 tomorrow. That, for example, if I'm answering
16 questions like on monitoring or whatever, the word
17 monitoring is used in this document. When we use the
18 term compliance monitoring relative to this panel, I
19 know what that means. The implications of using the
20 word monitoring and what it means within the U.S.
21 system, that would be very difficult for me to talk to.
22 So I think we have to recognize that we still may have
23 some problems tomorrow.

24 THE CHAIRMAN: I'm sure we probably will.

25 MR. LINDGREN: The first document, Mr.

1 Chairman, that I think should be marked as the next
2 exhibit is an extract from the Final Environmental
3 Impact Statement Land and Resource Management Plan
4 Superior National Forest.

5 THE CHAIRMAN: Exhibit 944.

6 ---EXHIBIT NO. 944: Document entitled: Final
7 Environmental Impact Statement,
8 Land and Resource Management Plan,
9 Superior National Forest.

10 MR. LINDGREN: And the extract is simply
11 Appendix H to that document. The following document,
12 Mr. Chairman, is an extract from the Management Plan
13 Superior National Forest.

14 THE CHAIRMAN: Exhibit 945.

15 ---EXHIBIT NO. 945: Extract from Management Plan,
16 Superior National Forest.

17 MS. BLASTORAH: I am sorry, Mr. Chairman,
18 I didn't hear which document that was.

19 THE CHAIRMAN: 944 is the Final
20 Environmental Impact Statement, Superior National
21 Forest.

22 MS. MURPHY: Land and Resource Management
23 Plan. It may have a significance.

24 THE CHAIRMAN: Right. Okay. And the
25 other one is 945.

MS. BLASTORAH: Mr. Chairman, I am sorry

1 to interrupt again. The photocopying seems to have cut
2 off the first two words of the title on Exhibit 945.
3 Could we just have the title in full?

4 MR. LINDGREN: I have the original at
5 home. I think it simply does read Management Plan,
6 Superior National Forest. I will undertake to verify
7 that.

8 MS. BLASTORAH: Thank you.

9 THE CHAIRMAN: What are the dates of
10 these. Are there any dates anywhere?

11 MR. LINDGREN: Yes. These are extracts
12 from the approved forest plan for the years 1986 to
13 1995.

14 MS. MURPHY: Are they both different
15 dates.

16 MR. LINDGREN: No, they are all the same
17 date, which is 1986.

18 THE CHAIRMAN: Do you want to go back to
19 the regulation and indicate what they should read and
20 start off there.

21 MR. LINDGREN: Okay. Starting from the
22 front, planning process page 46, the paragraph in
23 question, paragraph (d) under section 219.11.

24 MS. BLASTORAH: And this is for Mr.
25 Straight; is it?

1 MR. LINDGREN: This is for Mr. Straight.
2 Then on page 47, paragraph 6(d); page 49, paragraph (k)
3 which is on the right-hand column monitoring
4 evaluation.

5 And then this pertains to Dr. Euler, page
6 53, section 219.19 and, in particular, I'm interested
7 in subparagraphs (1) and (6) which are found on the
8 left-hand column of page 54. And that is it, Mr.
9 Chairman.

10 MR. STRAIGHT: Mr. Lindgren, just a
11 clarification. That was page 48, paragraph 6(d) that
12 you had asked that I read or 47.

13 MR. LINDGREN: That's correct, it's page
14 47.

15 MR. STRAIGHT: 47, 6(d), okay.

16 MR. LINDGREN: Mr. Chairman, I do
17 apologize for the delay that this does occasion and in
18 terms of fairness to the witnesses, I do apologize to
19 them. I don't think this will result in any delay, I
20 can simply deal with these questions tomorrow at the
21 outset.

22 Now, perhaps at this time, Mr. Chairman,
23 we could take a break to hear Ms. Cronk's submissions,
24 if you think that this is the appropriate time to do
25 that.

1 THE CHAIRMAN: Okay. How long are you
2 going to be in your total examination, do you expect?

3 MR. LINDGREN: With any luck, Mr.
4 Chairman, I could be finished tomorrow, tomorrow
5 afternoon late, but if...

6 THE CHAIRMAN: Well, it makes a
7 difference as to the party that follows you.

8 MR. LINDGREN: Well, Mr. Chairman, I
9 can't really be too accurate at this point. I'm not
10 sure at which time we are going to break to hear
11 further submissions on the code of conduct issue.

12 THE CHAIRMAN: All right. At whatever
13 time you finish tomorrow we will continue on with the
14 submissions from other parties and would not expect to
15 proceed with the next party in cross-examination
16 tomorrow.

17 MR. LINDGREN: That's a fair assumption.

18 THE CHAIRMAN: Is that a fair assumption?

19 MR. LINDGREN: That's right.

20 THE CHAIRMAN: Okay.

21 MR. LINDGREN: Just to clarify, Mr.
22 Chairman, I may require a bit of time on Wednesday
23 morning. The next party should be prepared to go
24 Wednesday morning.

25 THE CHAIRMAN: That's right. And we will

1 be going until approximately five:00 tomorrow as far as
2 the evidence goes. If you are going to take that long,
3 in other words, we won't be stopping early tomorrow in
4 terms of the evidence.

5 MR. LINDGREN: That was my concern.

6 THE CHAIRMAN: Then we will proceed on to
7 do the rest of the issue concerning counsels' relations
8 with the media. We would expect hopefully to start off
9 first thing Wednesday morning with the next party in
10 cross-examination.

11 MR. LINDGREN: Mr. Chairman, all I can
12 say is that I may need a half hour to an hour Wednesday
13 morning.

14 THE CHAIRMAN: Well, let's deal with that
15 tomorrow.

16 MR. LINDGREN: Thank you.

17 THE CHAIRMAN: Okay. Just before we
18 start in with this next session...

19 ---Discussion off the record

20 THE CHAIRMAN: Okay. We will take a
21 further 10 minutes at this time and then we will go on
22 with Ms. Cronk.

23 ---Recess taken at 4:55 p.m.

24 ---On resuming at 5:10 p.m.

25 THE CHAIRMAN: Thank you. Be seated,

1 please.

2 Would somebody mind shutting the windows
3 at the back of the room, it's getting a little drafty
4 in here. Thank you.

5 Ms. Cronk, I forgot to ask you, and I
6 apologize, are we going to have to refer to the package
7 of material you filed last week during the course of
8 your submissions?

9 MS. CRONK: It can be done in a way that
10 you don't have to, sir. So the answer is no.

11 THE CHAIRMAN: We left it upstairs,
12 unfortunately.

13 MS. CRONK: That's fine, sir.

14 Mr. Chairman, you will recall that when
15 the scheduling of this matter first arose we suggested
16 and it was agreed that we would provide notice to all
17 counsel of the then intended date upon which this
18 matter would be dealt with, and I would like to provide
19 to the Board - I haven't made copies for my friends -
20 an Affidavit of Service simply confirming that that was
21 done and the nature of the materials that were provided
22 to all counsel for full-time parties at this hearing.

23 THE CHAIRMAN: Very well.

24 MS. CRONK: (handled)

25 THE CHAIRMAN: I don't think this has to

1 be exhibited; does it?

2 MS. CRONK: No, sir.

3 Mr. Chairman, I should preface my
4 submissions on this matter first by an indication of
5 appreciation to the Board for receiving my submissions
6 this evening, firstly; and, secondly, by indicating
7 that as a result of the directions and discussions that
8 were held with the Board when this issue first arose,
9 my submissions will be directed to dealing with this
10 matter on a general plane in accordance with the
11 Board's indication of its preference without reference
12 to any specific past events by any party or by any
13 counsel.

14 I did, however, indicate last Tuesday
15 when we were in Thunder Bay for the portion of the
16 hearing that day that our instructions from our clients
17 are these: That we will have no intention at this time
18 of seeking a specific undertaking from Ms. Swenarchuk
19 or any other counsel by way of remedy, but that I have
20 received those instructions specifically on the
21 understanding that we reserve our right to bring the
22 matter fully to the attention of the Board should the
23 necessity for that arise in the future.

24 THE CHAIRMAN: Very well.

25 MS. CRONK: The nature of the issue as

1 you will recall, Mr. Chairman, is simply this: What
2 standard of conduct is expected in this proceeding of
3 legal counsel in their communications in and with the
4 media. And we use that language quite deliberately, as
5 the Members of the Board may appreciate, because in
6 some instances articles authored by legal counsel or
7 publications actually authored by legal counsel cannot
8 be appropriately or accurately described as
9 communications with the media, but rather publications
10 of a different nature.

11 So that what we suggest the issue is is
12 the standard of conduct expected of counsel in their
13 communications in and with the media and, by that, in a
14 published forum. In our respectful submission, the
15 standard should also apply --

16 THE CHAIRMAN: Well, are you excluding
17 the electronic media from this?

18 MS. CRONK: No, sir, I'm not.

19 THE CHAIRMAN: Okay.

20 MS. CRONK: I meant publications authored
21 by counsel, publications in that sense, but
22 communications generally with the media.

23 THE CHAIRMAN: Well, and that would also
24 include --

25 MS. CRONK: Electronic --

1 THE CHAIRMAN: A TV interview or anything
2 like that?

3 MS. CRONK: Yes, it would, sir.

4 THE CHAIRMAN: Okay.

5 MS. CRONK: In our respectful submission,
6 the standard should also apply, in addition to legal
7 counsel, to those persons appearing before you in the
8 role of counsel through the courtesy of the Board. And
9 we make that submission to you because, of course, in
10 hearings of this kind and in this hearing that
11 courtesy - as distinct from any right - that courtesy
12 has been extended to certain persons to appear in the
13 role of counsel as agents for various interest groups,
14 and it is our respectful submission that the same
15 standard of conduct should apply to individuals who
16 have been granted that courtesy by the Board as well as
17 to legal counsel.

18 Now, you will hear, we anticipate,
19 submissions from other counsel that this matter
20 involves an issue of freedom of expression or freedom
21 of speech. We start in our submissions by making this
22 assertion of proposition: It is not an issue of
23 freedom of expression, it is not an issue of freedom of
24 speech, it is not an issue of freedom of the press, it
25 is an issue, in the words of the honourable Mr. Justice

1 Grange of, and I quote:

2 "...legal ethics, courtesy, fairness and
3 professional conduct."

4 And you will find that reference, sir, at
5 page 4504 of the transcript extracts previously
6 provided to you. That is how he characterize the
7 issue, one of legal ethics, courtesy, fairness and
8 professional conduct.

9 One of the legal counsel in that case at
10 the same page of the ruling of Mr. Justice Grange
11 characterized the issue as follows:

12 "What we are really talking about here is
13 the appropriateness of the comments that
14 are made, the respect those parties have
15 for the whole process and for the dignity
16 of the process and, more importantly, the
17 responsibility of counsel in terms of
18 what they say to the press."

19 Mr. Justice Grange added, and the Board
20 Members may recall this, that the obligation of counsel
21 is all the stronger when the words 'complained of' are
22 not those of their clients but their own. In our
23 submission, Members of the Board, the issue with which
24 we are fundamentally concerned is an issue of fairness
25 and integrity of the process.

1 We start with the applicable Law Society
2 rules and you may recall, Mr. Chairman, that you asked
3 during the course of our previous remarks that those be
4 provided to you. There are, in our submission, two
5 relevant rules; namely, Rule 10 and 21. And for those
6 not familiar with the way in which those rules are
7 fashioned, there is first the expression of the rule of
8 conduct and then a commentary that follows it which is
9 a guide to interpretation put out by the Law Society as
10 to the manner in which the rule is to be interpreted
11 and applied.

12 THE CHAIRMAN: Ms. Cronk, could you just
13 repeat for us the transcript page of Mr. Justice
14 Grange's comment?

15 MS. CRONK: Yes, Mr. Chairman. The
16 relevant pages are 4504 to 4505.

17 THE CHAIRMAN: Thank you.

18 MS. CRONK: And those two pages contain
19 both the quote of counsel that I gave you and as well
20 his Lordship's statements.

21 (handled)

22 Rule 10, as the Board Members will see,
23 provides at the top of page 25, and I should say this
24 is an extract from the Code of Professional Conduct
25 binding all lawyers who are members of the Law Society

1 of Upper Canada in this province. Rule 10 provides
2 that:

3 "When acting as an advocate, the lawyer
4 while treating the tribunal with courtesy
5 and respect must represent the client
6 resolutely and honourably within the
7 limits of the law."

8 The commentary that then follows deals
9 first with the scope of the rule and abuse of process,
10 as well as various other subject matters including
11 courteousness and, in our submission, the relevant
12 portions of the commentary are Section 1, Section 2(d)
13 and Section 7 and they provide as follows:

14 First, dealing with the scope of the
15 rule:

16 "The principle of the rule applies
17 generally to the lawyer as advocate and,
18 therefore, extends not only to court
19 proceedings but also to appearances in
20 proceedings before boards, administrative
21 tribunals and other bodies regardless of
22 their function or the informality of
23 their procedures."

24 In our submission, that is self-evident
25 and clearly indicates that the standard of conduct

1 expected by the Law Society of legal counsel pertains
2 to hearings of this kind before this Board.

3 Section 2 of the commentary deals with
4 abuse of process and provides that:

5 "The lawyer has a duty to his or her
6 client to raise fearlessly every issue,
7 advance every argument, ask every
8 question however distasteful which the
9 lawyer thinks will help the client's
10 case. However, the commentary goes on to
11 indicate that the lawyer must discharge
12 that duty..." that being the duty to the
13 client: "...by fair and honourable means without
14 illegality and in a manner consistent
15 with the lawyer's duty to treat the
16 tribunal with candor, fairness, courtesy
17 and respect."

18 And we place some emphasis on that, Mr.
19 Chairman. It is an obligation to the tribunal that
20 every lawyer has to behave with fairness, courtesy and
21 respect.

22 Subparagraph (d) of that commentary
23 section provides that:

24 "A lawyer must not, by way of example,
25 endeavor or allow anyone also to endeavor

1 directly or indirectly to influence the
2 decision or action of a tribunal or any
3 of its officials in any case or matter by
4 any means other than open persuasion as
5 an advocate."

6 And I will return to the significance of
7 that in the context of this matter.

8 Section 7 of the commentary deals
9 specifically with the courteousness and it provides:

10 "At all times the lawyer should be
11 courteous and civil to the court and to
12 those engaged on the other side."

13 It goes on to note that legal contempt of
14 court and the professional obligation outlined in this
15 rule are different, they are not identical, and goes on
16 to indicate that:

17 "In some circumstances conduct which
18 might not be subject to penalty by way
19 of contempt can nonetheless violate the
20 rules of the Law Society."

21 It is important - and I will come in a
22 moment to Rule 21 - it is important in our submission
23 to understand the rationale for these rules and this
24 commentary and, in our submission, the reason for that
25 is because these rules and the standard of conduct that

1 they articulate is not a matter merely of civility
2 between people who have chosen to practice law, it's
3 not a question of Queensbury Rules, if I can express it
4 that way, it is not that minor a matter.

5 The rationale for these rules is that the
6 process and administration of justice must not only be
7 done but must be seen to be done, and what is meant by
8 that expression when used by counsel and judicial
9 figures is simply this: That each and every issue
10 relating to a matter before a tribunal or a court must
11 be dealt with fairly, and that means before that
12 tribunal.

13 There is a question of fairness to the
14 parties involved, there's a question of respect for the
15 tribunal or the decision-maker, and the rules are
16 intended to ensure that at all times all matters are
17 fully aired before the tribunal not elsewhere where
18 neither other parties who abide by the rules nor the
19 tribunal can fully respond; in short, in the media.

20 Rule 21 specifically deals with the
21 conduct of legal counsel in their public appearances
22 and public statements. It was introduced expressly to
23 deal with the issue of the conduct of legal counsel in
24 their dealings with the media and, in our submission,
25 two portions of the rule itself are relevant, subrule

1 No. 1 and subrule No. 4, and these are parts of the
2 rule, not the commentary, and they provide; first, in
3 subparagraph 1:

4 "Lawyers in their public appearances and
5 public statements should conduct
6 themselves in the same manner as with
7 their clients, their fellow
8 practitioners, the courts and tribunals.
9 Dealings with the media are simply an
10 extension of the lawyer's conduct in a
11 professional capacity. The mere fact
12 that a lawyer's appearance is outside of
13 the courtroom, a tribunal, or the
14 lawyer's office does not excuse conduct
15 that would otherwise be considered
16 improper."

17 Again stopping there. In our submission,
18 it's quite clear that what occurs outside the hearing
19 room is every bit as much to be governed by the rules
20 of professional conduct as is what occurs inside the
21 hearing room. And that rule makes it abundantly clear
22 that that's the case.

23 Subrule 4 of 21 provides:

24 "The lawyer should, where possible,
25 encourage public respect for and try to

1 improve the administration of justice.

2 In particular, the lawyer should treat
3 fellow practitioners, the courts and
4 tribunals with respect, integrity and
5 courtesy. Lawyers are subject to a
6 separate and higher standard of conduct
7 than that which might incur sanction
8 of the court."

9 In combination what these two rules do,
10 Members of the Board, in our respectful submission is
11 this: Rule 10 makes it clear what the duty of counsel
12 is to the tribunal. Rule 21 makes it clear that that
13 duty extends outside the hearing room and, further,
14 that the duty extends to other legal counsel and to all
15 parties involved in a proceeding not just to the
16 tribunal itself. And again, in our respectful
17 submission, it's important to understand the rationale
18 of these rules.

19 THE CHAIRMAN: What does the last line of
20 Rule 4 mean, in your view?

21 MS. CRONK: Again, it's a reference to
22 the same point, sir, that the conduct which might
23 constitute contempt of a tribunal or contempt of a
24 court is not necessarily the same conduct which will
25 trigger --

1 THE CHAIRMAN: That's referring to
2 contempt?

3 MS. CRONK: Yes.

4 THE CHAIRMAN: Sanction of the court in
5 contempt proceedings.

6 MS. CRONK: Yes, sir. Yes, sir.

7 THE CHAIRMAN: Thank you.

8 MS. CRONK: The point being, sir, that
9 conduct which falls short of contempt in a legal sense
10 may nonetheless be a violation of the rules of
11 professional conduct.

12 The ruling of Mr. Justice Grange, in our
13 submission, makes several things clear. And perhaps I
14 can just indicate to you what we consider to be the
15 relevant portions of it as you don't have the
16 transcript reference.

17 At page 4505 he specifically confirmed
18 that a lawyer has an obligation of courtesy, fairness
19 and good faith. That is nothing more than a
20 recognition of the rules that exist pursuant to the
21 rules of the Law Society. But it's important to
22 understand that he articulated that standard and that
23 duty in the context of a proceeding not, in our
24 submission, vastly dissimilar to the proceedings before
25 you. It was clearly not a court proceeding, it was

1 clearly a proceeding involving many many parties,
2 attracting a great deal of public attention that lasted
3 for a very long period of time and that dealt with the
4 very complex issues. There is a direct analogy, in our
5 submission, leaving aside the nature of the subject
6 matter, to the type of proceeding involved.

7 Indeed it's interesting to note in the
8 context of the proceeding that he was dealing with that
9 it was not only intended from the outset that public
10 interest be focused, be welcomed, be encouraged, but
11 full media coverage, full TV camera coverage on a daily
12 basis was permitted in that hearing specifically to
13 ensure that there was a large degree of public
14 communication about that, that occurred in that hearing
15 taking place.

16 So it was in the context of a very highly
17 publicized matter and a matter very much in the public
18 eye that his Lordship saw fit to reconfirm the standard
19 that should apply. The point being that even in a
20 proceeding of that kind the rules are not to be relaxed
21 but indeed strictly honoured.

22 Mr. Justice Grange also specifically
23 confirmed at the same page that a lawyer has an
24 obligation to conduct himself or herself in a
25 professional manner. One would have hoped that in most

1 circumstances that that suggestion need never require
2 an articulation, but in that case it did.

3 And perhaps of more immediate assistance,
4 I would hope to the Board, he found the following type
5 of conduct improper, and that is his Lordship's
6 characterization of improper conduct. First, at page
7 4508:

8 "Conduct which involved criticizing other
9 parties and other legal counsel in the
10 press; and, secondly, conduct which
11 involved criticism or the inference of
12 criticism in the press of the tribunal
13 itself in relation to a proceeding."

14 At page 4500 he said this:

15 "It is unfair for a client to speak to
16 the media maligning another party and
17 that other party's counsel when they are
18 not present to reply and have very
19 properly not put their position to the
20 media saving that for the Commission. It
21 is improper for counsel to permit his or
22 her client to make derogatory remarks
23 about other counsel to the media. It is
24 improper for counsel to say anything from
25 which it might be inferred that the

1 Commission is operating from a
2 preconceived bias or in bad faith."

3 Now, we submit, Members of the Board,
4 that the standard of conduct which should be expected
5 and required by the Board in this case of legal counsel
6 and of those appearing through your courtesy in the
7 role of legal counsel is simply that recognized by Mr.
8 Justice Grange.

9 And we suggest that there are the
10 following components to it with the following
11 rationale. First, there should be no criticism of
12 other parties or other legal counsel in the press or
13 media without the matter having first been raised here.
14 That includes criticism of evidence led by a party,
15 because that is a criticism of legal counsel, that is a
16 criticism of their client.

17 Now, you will hear, we expect, that
18 counsel should be free to express in the media their
19 position, their client's position on the evidence. We
20 agree with that, it's important in the public interest
21 that that should be the case. The difference is that
22 if in characterizing the evidence led by another party
23 one imputes improper motives to that other party, you
24 are imputing improper motives to their counsel, and
25 when you say that the evidence is worthless, is no

1 good, you are accusing legal counsel inferentially of
2 not doing their job, and you are doing so in a forum in
3 which they cannot reply and in which they cannot speak
4 for themselves in defence both of themselves and of
5 their clients.

6 Now, it's often been said in other forums
7 that - and I hasten to add here - that legal counsel
8 when they appear before you are - if Mr. Tuer and Mr.
9 Cosman were here I would say they are big boys and they
10 can take care of themselves, and that's certainly true,
11 and so can Ms. Cronk - but that's not the issue. The
12 issue is: When other counsel make comments in the
13 media that are critical of the evidence led by other
14 parties or of our clients, we cannot respond to it
15 without ourselves violating the rules; that is unfair.
16 The place to say it, if at all, is before you so that
17 we can respond both on behalf of ourselves and on
18 behalf of our clients.

19 The rationale obviously is fairness but
20 it's also dignity of the process. It undermines the
21 integrity of the process of this Board to have matters
22 litigated in the press. In our submission, it's simply
23 that basic.

24 Now, what does that mean in practical
25 terms. There is an obligation on all legal counsel to

1 bring the best evidence possible before this Board so
2 that at the end of the day you can have the best
3 evidence before you to assist you in arriving at a
4 decision. That's a duty, that's an obligation of
5 counsel on behalf of their clients. It means you must
6 not undermine the process outside the hearing room, and
7 that is what the rules of the Law Society mean when
8 they say that there is a positive obligation on lawyers
9 to encourage public respect for and to try to improve
10 the administration of justice; it means there is an
11 obligation on lawyers both to support and to encourage
12 respect for the process in which you are engaged and if
13 one is litigating issues in the press when parties
14 can't respond when criticisms of them are made, there
15 is the appearance in the public eye of unfairness,
16 there is the question in the public eye of whether the
17 proceedings are proceeding fairly.

18 There is also another element to this and
19 that is that one must not, as legal counsel, try to
20 influence the decision of a tribunal, including this
21 Board, in our respectful submission, with back door
22 arguments in the press.

23 Now, the Board Members may be familiar
24 with the tradition and the rule among lawyers that if a
25 matter is pending before the courts or pending before a

1 Board and has not yet been decided the rules of the Law
2 Society require both by tradition and by interpretation
3 that no comment be made on that.

4 Let me give you an example of what I mean
5 by this component of the standard. If there is a
6 motion pending before this Board when the Board has not
7 yet reached a decision on it, in some cases perhaps has
8 not even received all the submissions on it from other
9 legal counsel but certainly has reserved on the matter
10 or is in the course of hearing submissions on the
11 matter and has not decided the point, it is improper to
12 comment upon in the press the matters pending before
13 the Board in a way that could be perceived by the
14 public as an effort to influence the result to be
15 obtained in the hearing room. That is improper in our
16 submission.

17 That is why when matters, for example,
18 outside of a tribunal setting are under appeal or when
19 matters are pending in court lawyers will indicate to
20 the press, even when approached by the press, that they
21 can't comment on the matter because the matter is
22 pending before the court. That is to ensure that the
23 public understands that the matters being dealt with as
24 the system intends, before the Board.

25 The second component of the standard in

1 our submission is this: That counsel must not
2 expressly or implicitly criticize the Board in the
3 media by suggesting unfairness in the Board's procedure
4 or the way in which it is conducting a hearing. And
5 the reason for that, perhaps most importantly of all,
6 is that if there is a complaint about the way a
7 proceeding is progressing or about the way the Board is
8 conducting the proceeding or decisions made by the
9 Board they should be made here, they should be brought
10 to your attention here so they can be dealt with by you
11 with receipt of submissions from all counsel, if you
12 think that appropriate, so that you can deal directly
13 with the lawyers who have an obligation before you. If
14 a lawyer disagrees with a ruling made by this Board and
15 suggests that it's prejudicial to their client or that
16 it results in some other unfairness, this is the place
17 for that argument to be made.

18 THE CHAIRMAN: Or elsewhere.

19 MS. CRONK: Or elsewhere, sir, but not in
20 the press.

21 THE CHAIRMAN: Not in the press.

22 MS. CRONK: One might say in very
23 practical terms: How can this arise? It can arise in
24 a number of circumstances. The breach of that standard
25 can arise by arguing in the press for a certain result

1 on a motion that is pending before the Board, by
2 suggesting in the press that a Board ruling is
3 prejudicial or is unfair, those are matters -- or
4 biased - and you will recall that Mr. Justice Grange
5 was concerned about the inference of that as well as
6 the express articulation of it - those are matters that
7 are not proper because they undermine the integrity of
8 the process of the Board.

9 And again, sir, it comes to this, in our
10 respectful submission: That there is a place to raise
11 these things where they can dealt with fairly and
12 fully, and that's here, and there should not be back
13 door attempts to either influence a party, to criticize
14 a party, or to criticize the Board.

15 The third component of the standard, in
16 our respectful submission, is this: That one cannot
17 argue in the press or urge a particular result in a
18 matter pending before the Board, and that is the one I
19 just spoke of. That, I should add, is a time-honoured,
20 long-recognized rule. To do otherwise offends the
21 express rule of the Law Society against trying to
22 influence or permitting others within your control as a
23 lawyer to try to influence a particular result directly
24 or indirectly.

25 And I would refer you in that regard to

1 subrule 2(d) of Rule 10. And you will recall that I
2 said we place some emphasis on that, and that rule
3 specifically provides that:

4 "A lawyer must not endeavor or allow
5 anyone else to endeavor directly or
6 indirectly to influence the decision or
7 action of a tribunal or any of its
8 officials in any case or matter by any
9 means other than open persuasion as an
10 advocate."

11 That rule has traditionally been
12 interpreted by the Law Society and by counsel
13 practicing in this province as meaning that open
14 persuasion before the tribunal is the way in which to
15 try to achieve a result.

16 These are not, in our submission, new
17 rules, they are not new interpretations, they are not
18 matters of polite civility, they are essential, and in
19 our submission, to the administration of justice and to
20 the public perception of fairness.

21 We are asking the Board to articulate in
22 a decision what standard of conduct is to govern the
23 actions of legal counsel in communications in and with
24 the media in the future and those persons appearing by
25 virtue of your courtesy in the role of legal counsel,

1 and we suggest that it should have three components and
2 they are the ones about which I have just spoken.

3 They are, first, as suggested by Mr.
4 Justice Grange, that there should be no criticism of
5 other parties or of other legal counsel in the press or
6 media without the matter having first been raised here,
7 and that includes and extends to inaccurate and
8 critical characterizations of the adequacy of evidence
9 led by other parties or other counsel, and it includes
10 and extends to the imputation of improper motives to
11 any party or other counsel in leading that evidence.
12 That is, I repeat, a criticism of legal counsel and the
13 party before the Board.

14 The second --

15 THE CHAIRMAN: Ms. Cronk, just stopping
16 with No. 1, before you go on. The qualification you
17 placed on that suggestion was without first being
18 raised here.

19 MS. CRONK: Yes, sir.

20 THE CHAIRMAN: Even if it is raised here
21 in the first instance, and supposedly it's dealt with
22 here in the first instance, what in your view does that
23 allow counsel to convey to the media about what
24 occurred?

25 MS. CRONK: In our view, sir, that

1 conduct should never occur at any time by any legal
2 counsel involved in a proceeding before this Board or
3 any other tribunal whether it's been entertained here
4 first or not, but I put it that way because of the
5 ruling I gave you. Mr. Justice Grange made it quite
6 clear that in the first instance those complaints are
7 to be raised here and fully aired here, in our
8 submission.

9 THE CHAIRMAN: With the implication that
10 they can then be dealt with by the media?

11 MS. CRONK: With the implication that
12 they would then be dealt with by the Board and if there
13 was any infraction thereafter, the Board would deal
14 with it in accordance with its contempt remedies.

15 THE CHAIRMAN: Well, I can understand
16 that part, I'm just unclear about whether or not your
17 interpretation of Mr. Justice Grange's comments in the
18 Commission case was that after it had been raised first
19 before the tribunal and perhaps dealt with by the
20 tribunal, whether there was any prohibition on counsel
21 from relating what occurred in the media?

22 MS. CRONK: There is never any
23 prohibition, Mr. Chairman, in our submission on counsel
24 from confirming as a factual matter a ruling made by a
25 Board, including this Board, as to what the submissions

1 factually were or were not. It's the characterization
2 of conduct of others, it's the characterization of
3 evidence that crosses the line when done critically and
4 unfairly.

5 And the direct answer to your question is
6 that Mr. Justice Grange could not have made it clearer,
7 that any further commentary of the kind that he
8 regarded as improper would be dealt with in a much more
9 stringent way, and I refer you to the final portion of
10 his ruling in which he said that he could not and would
11 not tolerate its repetition. There was no legal
12 counsel in that room, sir, who did not understand that
13 if there was any repetition of the conduct that he
14 thought was improper, it was a contempt remedy that he
15 would be pursuing, and that was made abundantly clear.

16 THE CHAIRMAN: Okay. I don't want to
17 prolong it, but with the suggestion you have made,
18 would you be of the view that if the words 'without
19 first being raised here' were struck from it, that
20 would convey one of the precepts that you would want to
21 see this Board articulate?

22 MS. CRONK: Yes, Mr. Chairman.

23 THE CHAIRMAN: Okay.

24 MS. CRONK: The second component of the
25 standard, in our submission, is that counsel must not,

1 as I indicated previously, expressly or implicitly
2 criticize the Board in the media by suggesting
3 unfairnesses in the Board's procedure or in the way in
4 which it is conducting its hearing. And you will find
5 specific authority for that expression of the standard
6 in Mr. Justice Grange's ruling.

7 And thirdly, and finally in our
8 submission, the third component of the standard is that
9 one cannot argue in the media or urge a particular
10 result in a matter pending before the Board, because to
11 do so creates or runs the risk of creating in the
12 public eye the appearance of indirect or direct efforts
13 to influence the outcome of a decision by the Board
14 before that has been finalized.

15 THE CHAIRMAN: Okay. And when we go back
16 to No. 2, what is your view of the degree of control
17 that counsel should have on their own clients?

18 MS. CRONK: The Law Society rules, Mr.
19 Chairman, and Mr. Justice Grange's ruling make it quite
20 clear that legal counsel have an obligation and a duty
21 to control - that is the verb that is used - to control
22 their own client in respect of matters of this kind.

23 Indeed you may recall when I provided the
24 ruling to the Board that it had been suggested in the
25 Sick Children's Inquiry that because the client was so

1 large and the proceedings were so complex that counsel
2 was unable to influence or to have control over the
3 conduct of their client.

4 Mr. Justice Grange specifically rejected
5 that proposition and indeed said that, in matters of
6 the kind with which he was dealing, that is public
7 interest, public profile matters, that the obligation
8 of lawyers were the more pronounced to use their best
9 efforts to ensure that these standards weren't breached
10 by their clients.

11 Now, as a practical matter, Mr. Chairman,
12 if you are putting the question to me as a practicing
13 counsel, it is sometimes very difficult to ensure that
14 the rules are honoured by clients in all circumstances
15 and, in the end, the control of counsel is to say:
16 These are the circumstances in which we are prepared to
17 act, these are the rules, this is the way we practice,
18 you must abide by this if you wish our representation.
19 And I can tell you and Members of the Board that that
20 is the common approach taken by counsel in matters of
21 this kind. The direct answer to your question is, is
22 that cannot always be policed, but where there is a
23 repetition, where there is a course of conduct
24 evidenced by a particular party or a particular client,
25 it raises the inference that no effort has been made at

1 all to influence that degree of control.

2 And you will recall that in Mr. Justice
3 Grange's ruling he suggested that the conduct that had
4 given rise to the issue at all was really a matter that
5 could have been handled quite simply, and he proposed a
6 remedy for it, and the remedy that he proposed was mild
7 condemnation of the conduct that had occurred, an
8 expression of regret and an undertaking that it
9 wouldn't occur in the future.

10 In the case before him that undertaking
11 was not given by counsel and counsel indicated that
12 they were not prepared to try to control the comments
13 that had been made by their clients and, most
14 importantly, by themselves, and that there is the
15 direct implication in the decision of Mr. Justice
16 Grange that he was most concerned by that. And what he
17 said specifically was:

18 "There is an obligation on counsel to
19 control their own conduct and, to the
20 extent humanly and professionally
21 possible, that of their clients as well."

22 Now, I would like to translate those
23 submissions from the abstract to the practical in the
24 course of this proceeding. We have already said that
25 our clients and we as legal counsel regard this as a

1 very serious matter, that is the case. The reason that
2 that is the case is because this is a very long
3 proceeding, regrettably perhaps it has a long way to go
4 and there are now Board-required negotiation sessions
5 scheduled to start in the spring. Those negotiations
6 bear any possibility of success only if the lawyers and
7 the parties involved know that they can rely upon the
8 other parties and the other legal counsel involved to
9 abide by the rules because if they don't, one runs the
10 risk of having what is said in the negotiating room
11 repeated with a fluctuating degree of accuracy, if any,
12 the day later. That is not the spirit in which
13 negotiations bear any fruit.

14 The other practical reality, for Members
15 of the Board, in our respectful submission, to
16 understand and put this in a context is that the rules
17 for one have to be the rules for all, and parties who
18 have not to date engaged in conduct which arguably or
19 definitely crosses the line of the rules may be having
20 difficulty in ensuring that that remains the case when
21 it appears that's not the case for all.

22 So, in our respectful submission, it is
23 important given the length of the hearing that is yet
24 to come, given the course of negotiations that the
25 Board has ordered that all parties are going to be

1 participating in, that a very clear articulation of the
2 Board's expectations in this matter be received.

3 And, in our respectful submission, if the
4 Board accepts the submissions that we have made to you
5 today as to what that standard should be and does
6 articulate a standard, any breach of that standard by
7 any legal counsel involved or by parties within their
8 control should be dealt with to the full extent
9 permitted by law.

10 Thank you very much.

11 THE CHAIRMAN: Right. Just before you
12 step down, one more question since we touched it
13 inferentially; and, that is, what are your views
14 regarding any contact with media pursuant or in the
15 context of a negotiating session that the Board has
16 ordered?

17 MS. CRONK: We see the --

18 THE CHAIRMAN: In other words, not a
19 breach that criticizes anything but any contact during
20 the course of those negotiations and prior to the
21 report being submitted to the Board on April 30th as to
22 the results of that negotiation?

23 MS. CRONK: I should make my submissions
24 on this point clear, Mr. Chairman, for two reasons.
25 First, as we said to you previously, that the

1 negotiation sessions that have been ordered provide an
2 example of why this is so very important, but it's not
3 only because of those sessions that it is so very
4 important.

5 With respect to the negotiation sessions
6 per se it was our submission to you a week or so ago
7 and is again today that there will have to be
8 guidelines laid down and it may be the process should
9 be such that counsel should get together and discuss
10 what those guidelines might be before any particular
11 guidance from the Board is sought or ruling from the
12 Board is sought on the matter.

13 There are two ways to approach those
14 negotiations, they are either with prejudice or they
15 are not. If they are without prejudice that implies a
16 candor of discussion among legal counsel and the
17 parties which might not otherwise occur. There might
18 be some advantages to having them with prejudice. All
19 of those issues have to be considered and we have to
20 obtain instructions. Speaking for Mr. Cassidy and
21 myself, those are matters on which we will obtain but
22 do not yet have instructions.

23 But clearly the way in which those
24 negotiations are to be held, where they are held, who
25 is involved, who if anyone is a facilitator to those

1 discussions, whether they are with or without prejudice
2 are all matters which, in our respectful submission,
3 have to be addressed before they are held, but all of
4 that is merely but an example, in our submission, of a
5 much larger issue in this hearing; and, that is, what
6 is permissible outside this hearing room as the
7 standard of conduct by legal counsel in talking to the
8 media about what happens here.

9 And it is that matter that we ask you to
10 deal with now, not the guidelines with respect to the
11 negotiations.

12 THE CHAIRMAN: Very well.

13 MRS. KOVEN: Mrs. Cronk, two questions.
14 The first one being, you are asking us to rely
15 considerably on Mr. Justice Grange's ruling on this
16 matter, and when I read the ruling that you gave us it
17 seemed to me that he -- well, he was essentially
18 dealing with a situation where someone was accusing his
19 Commission of being out on a witch hunt which seemed to
20 me to be quite a serious allegation, and it wouldn't
21 surprise me that he was very concerned and would
22 certainly consider a code of conduct very seriously.

23 I don't know if we will ever be faced
24 with that sort of a serious situation in this hearing
25 or not, but it interests me, if that was essentially

1 the reason that he came out with his code of conduct,
2 was there anything before that particular incident that
3 caused him to make statements during his hearings about
4 the code of conduct of counsel and the media?

5 MS. CRONK: No, Ms. Koven, the issue was
6 first raised by the lawyer for the Attorney General in
7 the context not of allegations against the Commission
8 but in the context of allegations made against the
9 clients of the Attorney General.

10 There were comments made about the police
11 officers in the case, the investigating police officers
12 and the coroners which caused the motion to be brought
13 and it was in that context that the motion was
14 originally brought. That was coupled with comments
15 which were interpreted by his Lordship as being
16 directly critical of the Commission.

17 So he was concerned with three things:
18 Comments that were critical first of other legal
19 counsel, because when you criticize the client you are
20 criticizing the lawyer in the context of hearings of
21 this kind; when you criticize the evidence you are
22 criticizing the lawyer. And he was concerned about
23 criticisms of the counsel, criticisms of the parties
24 and criticisms of the Commission itself. And it is
25 not, in our submission, possible to segregate between

1 those three and the order.

2 Quite clearly the reason that the ruling
3 is expressed in the type of language that it is
4 expressed is because the situation was exacerbated by
5 the failure of counsel to respond in a manner that he
6 felt appropriate. Had there been an appropriate
7 response it might not have been articulated in that
8 fashion.

9 So there was an acceleration, if you
10 will, of the displeasure involved by his Lordship.

11 MRS. KOVEN: How early on did these
12 events take place in that hearing?

13 MS. CRONK: They took place at the end of
14 the first phase of the hearing and at the commencement
15 of the second which, the Commission commenced in the
16 spring, this occurred during the following February at
17 a time when there was another ten months virtually to
18 the day to go in the hearing. So it was at the halfway
19 point.

20 MRS. KOVEN: And were there any future
21 breaches of his guidelines or his code after his
22 ruling?

23 MS. CRONK: There were none that were
24 brought to his attention.

25 MRS. KOVEN: And the second question, are

1 you asking us to say something about what we would do
2 if there is a future breach of this code?

3 MS. CRONK: I would think I'm not. It is
4 our submission to you that if there is a breach that it
5 be dealt with in the expression that I used, to the
6 fullest extent under the law, and perhaps implicit in
7 the instructions that I have indicated we obtain from
8 our clients is that we would be advising them on all
9 relief available and obviously would bring the matter
10 to the attention of the Board.

11 The Chairman quite clearly and correctly
12 pointed out to me, when I last addressed you on this
13 issue, that when the Board makes a ruling it expects it
14 to be honoured. That is the expectation of everyone.
15 So one need not always say the obvious.

16 So I'm not urging upon you specific
17 inclusion of what will occur, but I am suggesting to
18 you that the implication in the ruling that you do
19 issue, if you accept our submissions, should be that no
20 breach of that standard will be acceptable to the Board
21 and that is because of the public interest at stake in
22 these hearings and because the matter has arisen in the
23 context of -- because of the context in which it has
24 arisen, even though the matter may not be argued on
25 that basis before you.

1 MRS. KOVEN: Thank you.

2 MS. CRONK: I don't know if I can be of
3 any further assistance, Mr. Chairman.

4 THE CHAIRMAN: Thank you.

5 MS. CRONK: Thank you.

6 THE CHAIRMAN: All right. Ladies and
7 gentlemen, I think we are going to adjourn for a half
8 hour, return at 6:30 and proceed with the scoping of
9 the Baskerville evidence.

10 MR. CASSIDY: Mr. Chairman, if I can just
11 clarify something. I think this is a matter of
12 clarification for the record. You indicated that the
13 written report dealing with the result of the
14 negotiation process was to be filed on April 30th;
15 however, your ruling of November 8th indicated it's
16 April 3rd.

17 THE CHAIRMAN: No, I meant April 3rd.
18 I'm sorry.

19 MR. CASSIDY: Thank you.

20 MS. CRONK: Mr. Chairman, just before you
21 rise. I should indicate one other thing. In the
22 course of dealing with this matter a week or so ago
23 there was discussion about a decision of the Supreme
24 Court of Canada and some comments made by the then
25 Chief Justice, Chief Justice Dixon in the Operation

1 Dismantle case and I indicated to you that my
2 recollection of the case was similar to your own, that
3 there had been criticism of the conduct of one of the
4 counsel involved in terms of their conduct with the
5 press.

6 That is the case. The decision itself,
7 it is not recorded on the record, his Lordship's
8 comments are not recorded in the decision itself. We
9 have copied the case and have it available, but I can
10 tell you, sir, it's not in the case. It was in the
11 press at the time --

12 THE CHAIRMAN: Well, I think counsel in
13 that case got the message in any event.

14 MS. CRONK: If he didn't, he didn't read
15 the papers. But it was also made in the context of a
16 speech delivered by the Chief Justice to various legal
17 groups, but I saw no point in the circumstances of
18 providing you with the case.

19 THE CHAIRMAN: Very well. Thank you.
20 We will return at 6:30.

21 ---Dinner recess taken at 6:00 p.m.

22 ---On resuming at 6:50 p.m.

23 THE CHAIRMAN: Thank you, ladies and
24 gentlemen. Please be seated.

25 We are ready to commence with the scoping

1 of the evidence concerning Dean Baskerville's
2 appearance and, as you are probably aware, we have
3 received statements of issues from six parties and
4 those are the parties that will be permitted to examine
5 and take part in the examination of Dean Baskerville.

6 Now, we outlined at the time that the
7 Board decided that it would call Dean Baskerville as
8 its witness that his testimony, as far as the Board was
9 concerned, would be limited to certain things. Those
10 things include the audit prepared and conducted by Dean
11 Baskerville in 1986 which has been filed as Exhibit 16,
12 the Ministry of Natural Resources response to that
13 audit, the action plan, also filed as an exhibit, plus
14 four separate articles authored by Dean Baskerville
15 which have been exhibited as numbers 135, 378, 405 and
16 we are not sure whether it's Exhibit No. 425 or 426,
17 one of the two. In addition, there is a fifth article
18 which is appended to the audit itself, Exhibit 16, as a
19 background document.

20 MR. CASSIDY: Mr. Chairman, I can assist.
21 Our exhibit list indicates that the Baskerville
22 document is 425 being an excerpt from the Forestry
23 Chronicle. 426 is an excerpt from the Red Lake Crown
24 Management Unit Plan.

25 THE CHAIRMAN: Okay. So then it's 425.

1 Now, those are the basic documents with which Dean
2 Baskerville is going to concern himself in the course
3 of this examination.

4 Prior to calling on counsel and the
5 representatives of OFAH to comment on the statements of
6 issues that have been filed by the parties, the Board
7 wants to indicate to you some areas of concern that the
8 Board itself has identified.

9 These are as follows: Firstly, the Board
10 would like to know what the terms of reference for Dean
11 Baskerville's audit were, what did he understand his
12 task to be, and how did he undertake the task assigned
13 to him, the latter question relating essentially to the
14 methodology that he followed in undertaking his audit.
15 It's referred to in Dean Baskerville's statement of
16 evidence in paragraphs 11 and 12 essentially.

17 Secondly, paragraph 5 of Dean
18 Baskerville's statement of evidence, he indicates that
19 while data are important there will always be
20 uncertainty and unpredictability in managing a forest.
21 The Board wants to question him or to have Mr. Turkstra
22 lead him in questioning as to when have you collected
23 enough data, and what is the point of collecting more
24 if there will still be unpredictability and
25 uncertainty. Where is that cut-off point, if we can

1 put it that way, with respect to that question.

2 Thirdly, in paragraph 7 of Dean
3 Baskerville's statement of evidence, he indicates that
4 there are no quantifiable measures to relate habitat to
5 wildlife populations. In paragraph 9 he indicates
6 there is enough information to do so. Which is it? It
7 doesn't appear you can have both.

8 Fourthly, paragraph 15. Is Dr.
9 Baskerville saying that the whole system requires a
10 complete overhaul where he refers to systemic problems
11 or that through review of specified areas the problems
12 are manageable. We would like that clarified.

13 Paragraph 24. Dean Baskerville indicates
14 in his statement of evidence that many actions proposed
15 by the Ministry of Natural Resources could - and he
16 uses the word 'could' - address some of the problems
17 identified in the audit. Now, does he mean by this:
18 Could the problems be addressed, or does in fact the
19 action plan accomplish this. It's really a
20 clarification of the use of the word 'could' in that
21 context.

22 Paragraph 25. In paragraph 25 Dean
23 Baskerville indicates that he is not able to assess
24 whether actions taken by MNR that call for future
25 studies, et cetera, and the development of policy will

1 respond to the audit. The Board would like to know why
2 can he not indicate this; is it because there is not
3 enough time to evaluate it, or does he feel that MNR's
4 action plan is inadequate to do so.

5 No. 7. Is Dr. Baskerville saying that
6 MNR does not practice integrated resource management
7 and, in that context, is he saying that there is a
8 basic distinction between his concept of integrated
9 resource management and the concept articulated by MNR
10 using the same words, integrated resource management.
11 It appears from what he is saying in his witness
12 statement that he has a different concept than what the
13 Ministry has put forward to the Board. We would like
14 him to indicate what those differences are.

15 Now, the Board, as you know, has
16 indicated that Dean Baskerville will be available for a
17 total of nine days commencing with December 4th, 5th,
18 6th and 7th. He will not be available on December 8th
19 and he will be available for the five days, if
20 necessary, the following week.

21 We have had an indication from Mr.
22 Turkstra that he would take presumably no longer than
23 one and a half days for the presentation of
24 evidence-in-chief, that will leave the remaining time
25 for cross-examination and it will be split presumably

1 amongst the six parties who will likely wish to
2 cross-examine. As well, there may be questions
3 emanating from the Board during the examinations of all
4 the parties.

5 Now, we are going to ask all counsel and
6 representatives of parties entitled to examine Dean
7 Baskerville to attempt to allocate amongst themselves
8 the time available and we are going to ask counsel to
9 consult either tonight or early tomorrow so that we can
10 have an indication as to what that allocation of time
11 amongst the various parties will be. If you are unable
12 to indicate or to agree on an appropriate allocation,
13 then we will agree for you. There is no intention on
14 the part of this Board to have Dean Baskerville's
15 examination extend beyond the second week.

16 Now, the Board has taken the position
17 that it has no property interest in a particular
18 witness. If a party wishes to call Dean Baskerville at
19 a subsequent date as part of their own case they may be
20 at liberty to do so, but since in this examination the
21 Board has called Dean Baskerville as its witness, it is
22 going to exert what it considers its right to delineate
23 the areas of evidence that the Board wishes him to
24 address. And the reason I'm stating all of this for
25 you is because in looking over the statements of issue

1 for some of the parties there are certain areas that
2 the Board is going to indicate it does not want the
3 time taken up during this examination with questions
4 relating to certain issues that have been put forward.

5 In some cases the Board considers some of
6 those issues to be repetitive in terms of the evidence
7 that has already been adduced before this Board; in
8 other cases the Board feels that it is not appropriate
9 in terms of this examination because it does not really
10 relate to Dean Baskerville's audit or the other
11 documents that we are going to be dealing with in terms
12 of this examination.

13 Now, we have outlined some areas with
14 respect to some of the parties' statements that we are
15 going to indicate that we do not want questions on, and
16 we will start with the Ontario Federation of Anglers &
17 Hunters in terms of their statement.

18 Firstly dealing with additional issues,
19 we do not propose that the parties examine Dean
20 Baskerville on the proposed effects monitoring program
21 proposed by the Ministry in Panel 16's evidence, that
22 is the issue set out in Paragraph 4(i).

23 The next issue, the National Forest
24 Sector Strategy. We are not interested in terms of
25 this examination of having questions of Dean

1 Baskerville on this strategy. This is one of many
2 strategies, there are a number of jurisdictions out
3 there which follow different strategies or different
4 methodologies and we are not going to utilize Dean
5 Baskerville's time in terms of questioning the strategy
6 that OFAH identified, in this case, the National Forest
7 Sector Strategy.

8 No. 4, the role of the public in timber
9 management planning. Once again, Dean Baskerville
10 looked at in his audit the process that was in
11 existence at that time. We have heard a lot of
12 evidence throughout the course of this hearing on the
13 role of the public in terms of timber management
14 planning. We do not feel it would be useful to
15 question Dean Baskerville on that role in this
16 examination.

17 Now, another issue identified by OFAH is
18 the questions concerning in paragraph (x) site
19 degradation, that is under Additional Issues 4(x).
20 Once again, we have heard a lot of evidence on site
21 degradation. We do not feel that Dean Baskerville in
22 the course of his initial audit went into that kind of
23 detail as a soils expert, he looked at site degradation
24 in terms of process. We have heard a lot of evidence
25 from experts in the field of soils, in the field of

1 equipment management, et cetera, and we don't feel that
2 it is appropriate to question Dean Baskerville on the
3 details of site degradation.

4 Lastly, allowable cut effect. We are
5 going to invite Dr. Quinney to attempt to convince us
6 why we should hear from Dean Baskerville on the
7 allowable cut in terms of the fact that this wasn't
8 dealt with per se in his audit and we will give you an
9 opportunity, Dr. Quinney, in a moment to comment on
10 that.

11 Now, having indicated that we don't want
12 to hear, in terms of cross-examination, questions
13 relating to these particular issues, that does not mean
14 that these issues are not relevant to this hearing.
15 Any of the parties, if they so wish, can deal with
16 these issues in terms of their own case. If they wish
17 to call witnesses to deal with some of these topics
18 that we have eliminated with respect to Dean
19 Baskerville, they are free to do so, provided of course
20 that in doing so it will be relevant to the matters
21 before us.

22 MS. BLASTORAH: Mr. Chairman, may I ask
23 one point of clarification on that point. You
24 indicated earlier -- you harkened back to the issue of
25 property in a witness and indicated that if other

1 people wished to call Dean Baskerville at another point
2 for their own purposes, and since you are mentioning
3 people dealing with this sort of thing in their own
4 case, I have some concern about the discussions that we
5 had at the time that it was originally agreed the Board
6 was going to call Dean Baskerville.

7 And my understanding at that time was
8 that the only party considering calling Dean
9 Baskerville themselves was the Ontario Federation of
10 Anglers & Hunters, and I thought I had understood the
11 Board's position that they did not want to be put in
12 the position of calling Dean Baskerville if somebody
13 else was going to call him, and OFAH undertook at that
14 time not to call Dean Baskerville.

15 And I'm just wondering if the Board had
16 changed their position on that.

17 THE CHAIRMAN: Well, the Board may have
18 to review the transcripts, Ms. Blastorah, but it was
19 our understanding that at the time it arose the Board
20 indicated it wasn't particularly fond of the idea of it
21 calling Dean Baskerville, being the Board, and then
22 having other parties also call him.

23 We did, however, at that time, as we
24 recall, hear submissions on that point to the effect
25 that if other parties wished to call Dean Baskerville

1 why should the Board be in a position to prevent that
2 and, more to the point, could we prevent that; does the
3 Board have a property interest, so to speak, in a
4 witness.

5 MR. CASSIDY: I think we are all going to
6 have to review the transcripts because I believe my
7 colleague Ms. Cronk made some detailed submissions on
8 that whole issue, Mr. Chairman, in terms of whether the
9 Board should even get into calling a witness where a
10 another party indicated they were going to call that
11 person. You might want to canvass all of us looking at
12 those transcripts - unless Ms. Blastorah has them
13 here - and we can review them at that point.

14 MS. BLASTORAH: Mr. Chairman, I don't
15 want to take a great deal of the Board's time with
16 this, and perhaps it would be appropriate to allow
17 other counsel to have an opportunity to review the
18 transcript, but perhaps I could just refer you to the
19 relevant portions. It's Volume 120 commencing at page
20 20041 and extending approximately back to 20085.

21 And at that time the issue did come up
22 and submissions were made with regard to the
23 appropriateness of the handling of Dean Baskerville's
24 evidence and one of the ways in which that arose was a
25 proposal by Mr. Turkstra as to sort of switching back

1 and forth between cross-examination and
2 evidence-in-chief as a party dealt with various issues
3 that were or weren't addressed in his statement of
4 evidence.

5 And that became a concern to a number of
6 parties because it would be very difficult to draw that
7 line, and there was an extensive canvassing of that
8 issue at that time, and my review of the transcript
9 reminds me that one concern of the Federation's was
10 that they not be limited in their cross-examination
11 because they felt if they were going to be extensively
12 limited that they would be in a position of calling
13 Dean Baskerville themselves.

14 And at that point you indicated that the
15 appropriate way in the Board's opinion and that of most
16 of the other counsel who made submissions was that Dean
17 Baskerville would prepare his statement of evidence
18 based on the audit and the action plan as it relates to
19 issues arising in the audit and other issues would be
20 put forward by the parties in statements of issue in
21 the normal course and a normal scoping session, as we
22 are having here tonight, would be dealt with.

23 And essentially Dean Baskerville's
24 evidence would be dealt with, as had been the case with
25 all the other panels of evidence, the Board would

1 indicate what they felt would be helpful to them and
2 what they felt was relevant, and other issues would be
3 scoped out, and basically based on that proposal the
4 Federation at that time indicated that they would
5 undertake not to call Dean Baskerville.

6 But I think I should allow the other
7 parties the opportunity --

8 THE CHAIRMAN: Right. Well, I think the
9 Board will review its position on that. Thank you for
10 bringing it to the Board's attention.

11 Quite frankly, that whole discussion
12 slipped the Board's mind when it reviewed the
13 documentation and, if that is the case, then I think we
14 will probably go back to the way we dealt with it
15 initially and allow some scope beyond the actual audit,
16 provided that in this session here we are going to
17 clearly indicate to you areas that we feel are not
18 necessarily going to be helpful.

19 However, I think the Board is not going
20 to reverse its position in any way, shape or form
21 beyond the fact that Dean Baskerville is here for a
22 total of nine days and the parties amongst themselves -
23 and we are encouraging some agreement - are going to
24 have to allocate the time available for
25 cross-examination so that each of the parties can deal

1 with the issues that they feel are important, but they
2 are going to have to fit it in within that nine days
3 and, effectively, it's seven and a half days maximum
4 for cross-examination, and there may be some time
5 required towards the end of that for some kind of
6 re-examination by Mr. Turkstra to clarify some further
7 issues. We will deal with that when we get to the
8 order of presentation.

9 So I think -- go ahead, Mr. Freidin.

10 MR. FREIDIN: Just one comment, Mr.
11 Chairman. I don't think, as I read the transcript,
12 just so it's clear where the Ministry is coming from, I
13 understood OFAH's position to be that they would be
14 willing to in fact leave to the discretion of the Board
15 what matters would be properly dealt with in terms of
16 additional issues, and that is what we are here to be
17 doing today and that they would accept the Board's
18 position on that. They would not say: We do not like
19 the Board's decision on that and, therefore, we will
20 call Dean Baskerville ourselves. I just want to make
21 that clear, that that's the Ministry's understanding.

22 THE CHAIRMAN: Well, again, unfortunately
23 in preparing for this scoping session the Board should
24 have, and we apologize, have gone back to that earlier
25 discussion so that we could clarify in our own minds

1 exactly what we said at that time, and perhaps that is
2 unfortunate in this context.

3 The Board has attempted in setting out
4 the areas which it wished to cut from the examination
5 some of the areas that it does not find in its view
6 particularly helpful in terms of Dean Baskerville's
7 evidence. Those areas, and I think we can reiterate
8 some of them because I think it will apply even to our
9 previous ruling, are really the areas dealing with
10 effects monitoring, Panel 16 evidence. And that
11 applies also to MNR, it was in your statement of issues
12 as well, and we feel that that is evidence that arose
13 subsequent to Dean Baskerville's audit, it had nothing
14 to do with his audit, it is evidence before the Board
15 of parts of the application that are properly before us
16 for decision and it can be dealt with in terms of
17 parties calling their own evidence.

18 MR. FREIDIN: I agree wholeheartedly and
19 I in fact indicated to Mr. Turkstra just after we broke
20 from the other submissions that we in fact were
21 withdrawing our request to have Dean Baskerville deal
22 with that for the very reasons indicated.

23 MR. MARTEL: Well, we took it away from
24 you last night.

25 THE CHAIRMAN: As far as the evidence

1 concerning site degradation, we feel frankly we have
2 heard enough on that, we have heard about compaction,
3 rutting, we've heard from people outlining the various
4 equipment used, the remedies, the mitigation efforts,
5 et cetera. We really don't feel that Dean Baskerville
6 can be all that helpful in going into those kinds of
7 details.

8 With respect to the National Forest
9 Sector Strategy, this is one strategy from amongst a
10 number of strategies but perhaps, Dr. Quinney, this is
11 an area that if you feel this is one of the additional
12 issues that goes outside the audit itself that you wish
13 to canvass, then perhaps the Board within the time
14 limits allotted to you can be canvassed.

15 The same thing with respect to the role
16 of the public in timber management planning, but you
17 must take into account that we have heard a lot of
18 evidence on the role of the public in the process, the
19 various opportunities for the public to review
20 decision-making and how decisions are reached. We
21 don't expect really to be spending a lot of time
22 questioning Dean Baskerville on the role of the public
23 in timber management planning and ultimately that is
24 going to be a large component of the Board's decision.

25 MRS. KOVEN: I don't think it's the fact

1 that we have heard a lot of evidence about public input
2 but I think we don't see Dean Baskerville, nor does he
3 set himself up to be, an expert in public participation
4 in timber management planning.

5 THE CHAIRMAN: And as far as the
6 allowable cut, I suppose there can be some questions in
7 that area; but, again, the Board feels it has gone
8 through or had presented to it at this stage a
9 considerable amount of evidence as to how the Ministry
10 goes about calculating the MAD and how it previously
11 went about calculating allowable cut, et cetera. I'm
12 not sure that Dean Baskerville can add a lot to that at
13 this point in time. I'm sure we are going to hear from
14 other parties as they put their cases in on this as
15 well.

16 So essentially, Dr. Quinney, the areas
17 that we would like you to stay away from in the
18 cross-examination are the questions relating to site
19 degradation and anything relating to Panel 16's
20 evidence.

21 The other additional issues you referred
22 to can be dealt with to the extent that you wish to
23 deal with them within the time limit that will be
24 imposed, and also to the extent that we feel it's
25 helpful once the questioning actually starts.

1 It's hard for us to tell just how helpful
2 it is until the questions are actually being put
3 forward, but we will indicate if we find the questions
4 to be repetitive or to be of little assistance to the
5 Board at that time.

6 The other statements of issues submitted
7 by the other parties appear to the Board, in terms of
8 their contents, to deal essentially with the documents;
9 the audit, the Ministry's response to it and the other
10 articles and, therefore, in the Board's mind appear to
11 be properly within the ambit of Dean Baskerville's
12 appearance and so we don't appear to have any problem
13 with that.

14 Now, having said that, we want to give
15 the parties an opportunity to make submissions at this
16 time on their statements of issue.

17 Dr. Quinney?

18 DR. QUINNEY: Mr. Chairman, I have a
19 request and the request would be: Would it be possible
20 for the Board to review the transcripts concerned with
21 the most recent Dr. Baskerville discussion that we did
22 have with Mr. Turkstra here a number of months ago and
23 that after the Board has had a chance to review those
24 transcripts, at least we start this discussion again
25 perhaps at the same time tomorrow evening?

1 THE CHAIRMAN: Well, with respect, Dr.
2 Quinney, I don't think the Board is going to do that.
3 The Board will in fact review the transcript. If there
4 is any change to what the Board has already indicated,
5 it will notify the parties first thing in the morning,
6 but we don't feel that there is any material change
7 from what we have indicated.

8 The items that we have outlined in your
9 client's statement of issues we have indicated from our
10 reading of the evidence up to this point and from our
11 understanding of Dr. Baskerville's audit and response,
12 et cetera. We have already indicated those are the
13 issues that we feel are appropriate for him to deal
14 with, and some of them extend beyond the audit.

15 And to that extent, given the fact that
16 you had undertaken not to call him as your own witness
17 as a result of his appearance as the Board's witness,
18 we are prepared to entertain questions on those areas.
19 We have really only delineated two areas in your
20 statement of issues that we would prefer that you don't
21 deal with simply because we don't feel that those areas
22 are going to be helpful to the Board. And the same
23 applies to the Ministry with respect to Panel 16
24 evidence.

25 Do any other parties have any comments?

1 Ms. Seaborn?

2 MS. SEABORN: Mr. Chairman, just a
3 couple of questions that may assist everyone. First of
4 all, in terms of the time that is going to be allocated
5 for Dean Baskerville, I think it will make some
6 difference in terms of estimates as to what sort of
7 days we are looking at in terms of the length of hours
8 the Board intends to sit.

9 THE CHAIRMAN: We are going to do that.
10 We were going to request all the parties, to the extent
11 they can, to indicate to the Board how long they
12 propose to be.

13 MS. SEABORN: That was going to be my
14 next question, is whether people were going to give
15 those estimates on the record tonight and also the
16 issue of order of presentation because --

17 THE CHAIRMAN: We are going to deal with
18 that as well.

19 MS. SEABORN: Okay, thank you. And with
20 respect to our statement of issues, I don't think there
21 is anything I can add, unless Mr. Turkstra has any
22 questions of clarification.

23 THE CHAIRMAN: Okay.

24 Now, as far as the sitting days, we are
25 going to sit in Toronto and we are going to sit at the

1 Board's offices. We are going to sit from 9:00 a.m. to
2 5:00 p.m. Monday through Thursday commencing December
3 4th, and the same hours the following week. And, if
4 necessary, we will sit the fifth day that week to
5 complete Dr. Baskerville's appearance.

6 As far as the order of presentation goes,
7 we have given this some thought and we feel that the
8 appropriate order, given the nature of Dean
9 Baskerville's audit and how it impacts upon the various
10 parties before the Board, that the order of
11 cross-examination should be as follows:

12 Leading off should be Forests for
13 Tomorrow, followed by Mr. Hunter, followed by the
14 Ontario Federation of Anglers & Hunters, followed by
15 the Ministry of Natural Resources, followed by the
16 Industry, and concluding with the Ministry of the
17 Environment.

18 Now, having said that, if there is
19 anything arising out of the cross-examinations that
20 have to be clarified, then the Board will entertain
21 either clarification through Mr. Turkstra in
22 re-examination or, if it is something extremely
23 prejudicial, a possible re-examination by a particular
24 party.

25 MR. FREIDIN: Can I make submissions in

1 relation to that, Mr. Chairman?

2 THE CHAIRMAN: Yes.

3 MR. FREIDIN: Mr. Chairman, in my
4 submission it's prejudicial to the proponent who is
5 going to have to live with any terms or conditions
6 which are imposed by this Board to take any position in
7 terms of cross-examination, the order of
8 cross-examination other than what is normal in all
9 hearings that I have ever been involved in and, that
10 is, that the proponent would cross-examine last.

11 It's for that very simple reason and I
12 think it's customary that that is the case. The
13 Ministry would have to be in the position to be able to
14 respond to evidence that Dean Baskerville may give in
15 cross-examination by other parties that may, if left
16 unchallenged or unquestioned by the proponent, might
17 give rise to a term or condition imposed on the
18 proponent.

19 For those reasons, I would request that
20 the order be changed and that the Ministry of Natural
21 Resources be designated as the last party to
22 cross-examine Dean Baskerville.

23 Mr. Chairman, you yourself mentioned --
24 well, I think those are my submissions.

25 THE CHAIRMAN: The difficulty with this

1 particular examination is the caricature of Dean
2 Baskerville's evidence vis-a-vis the various parties,
3 and we are having some difficulty, Mr. Freidin, in
4 determining who is opposed in interest with respect to
5 some of this evidence as evidenced by the audit.

6 MR. FREIDIN: I'm not too sure whether I
7 quite understand why you would be choosing an order in
8 this particular case in terms of who is opposed in
9 interest when you are dealing with the Ministry of
10 Natural Resources who is interested in what everybody
11 has to say about what obligations by way of terms or
12 conditions should be imposed on it.

13 It is customary -- I repeat, it's the
14 Ministry of Natural Resources that is going to have to
15 live with the consequences of this hearing, some of
16 them which may arise as a direct consequence of the
17 evidence of Dean Baskerville just like any other
18 witness. It is not, in my respectful submission, an
19 order of cross-examination which should be determined
20 on the basis which has been customary for the ordering
21 of cross-examination in relation to those parties other
22 than the Ministry of Natural Resources.

23 When it comes time to determine the order
24 of cross-examination of the other parties, not the
25 proponent but the other parties, I say that the order

1 and the criteria that you have set out and have used to
2 date are proper.

3 The Ministry of Natural Resources is not
4 just another party for the reasons I have indicated and
5 I, again, quite strongly urge the Board to reassess the
6 order of cross-examination and allow the proponent to
7 occupy the standard and customary position of the
8 person upon whom obligations will arise and, that is,
9 to cross-examine last.

10 THE CHAIRMAN: Mr. Turkstra, do you have
11 any submissions to make in this regard?

12 MR. TURKSTRA: Mr. Chairman, I think
13 there is some strength to what Mr. Freidin is saying.
14 He is the proponent and it's true that he should be --
15 there is some argument to be made that he should be
16 given the opportunity to respond to the Ministry of the
17 Environment concerns, and I find it difficult to make
18 an effective answer to that.

19 Other counsel may be able to supply my
20 inability to do so, but I think he's right.

21 THE CHAIRMAN: Ms. Seaborn?

22 MS. SEABORN: Mr. Chairman, I'm not going
23 to object to a change in order which would place MNR
24 following us in cross-examination. What I would
25 suggest is that MNR cross-examine last and let MOE

1 cross-examine just before MNR.

2 THE CHAIRMAN: Any other submissions?

3 (no response)

4 All right. Ladies and gentlemen, the
5 Board is persuaded that the order should change for the
6 reasons given by Mr. Freidin.

7 MR. FREIDIN: Thank you, Mr. Chairman.

8 THE CHAIRMAN: Therefore, the order will
9 be: Forests for Tomorrow, Mr. Hunter for the
10 Nishnawbe-Aski Nation, OFAH, the Industry, the Ministry
11 of Environment and followed by the Ministry of Natural
12 Resources.

13 Now, can we have some estimates from the
14 parties, to the extent that they can at this stage, as
15 to how long they may be in cross-examination.

16 Mr. Freidin?

17 MR. FREIDIN: Mr. Chairman, I think
18 without giving any consideration whatsoever as to the
19 time it might take for added cross-examination as a
20 result of answers given in the cross-examination by
21 those who precede, I would say half a day.

22 So what I was going to suggest is a half
23 a day and perhaps because there is the distinct
24 possibility that I would want to ask some questions
25 arising out of other earlier evidence, that about half

1 a day - a half a day at least I suppose of flex time be
2 built in for the proponent.

3 THE CHAIRMAN: For your party?

4 MR. FREIDIN: Yes. So a full day then.

5 THE CHAIRMAN: A roundabout way but you
6 are there.

7 THE CHAIRMAN: Mr. Cassidy?

8 MR. CASSIDY: Well, it will be the first
9 time that myself or Mr. Cosman will have the
10 opportunity to cross-examine after someone, so it's a
11 new experience for us; however, I would say half a day
12 to a day. And I think I can be helpful and say it
13 would lean towards half a day, but I want to reserve
14 that escape hatch up to a day.

15 THE CHAIRMAN: Okay. Mr. Lindgren?

16 MR. LINDGREN: Well, I did attempt to
17 contact Ms. Swenarchuk to obtain an estimate, I was
18 unable to reach her, but I would suspect that she would
19 likely be most of the day, if not a whole day.

20 THE CHAIRMAN: Dr. Quinney?

21 DR. QUINNEY: Mr. Chairman, the reason I
22 hesitate here is simply that I believe that it's only
23 after Dr. Baskerville's oral evidence will we be in a
24 position to accurately determine how long we would be.
25 Our statement of issues is based exclusively on those

1 areas we do consider to be relevant and did honestly
2 believe would assist the Board.

3 THE CHAIRMAN: Well, you can appreciate
4 at this point in the case that the Board has some idea,
5 quite frankly, as to what will in fact assist it, we
6 have heard a considerable amount of evidence, and we
7 are trying to be honest with the parties as well--

8 DR. QUINNEY: Yes, indeed.

9 THE CHAIRMAN: --in that we don't want
10 you wasting your time nor do we want to waste the
11 public's time in prolonging this hearing any longer
12 than necessary in terms of evidence that we don't
13 necessarily find helpful. That is the whole purpose of
14 these scoping sessions.

15 DR. QUINNEY: Absolutely, Mr. Chairman.

16 MR. CASSIDY: If I can just assist, I
17 might remind the Board that it has powers under the
18 SPPA to limit cross-examination.

19 THE CHAIRMAN: No, we know that, on
20 repetitive matters and where we felt we've heard
21 enough as well, I think it's Section 23 or in around
22 those sections. We're quite aware of that, but what we
23 are hoping to do in these scoping sessions is to
24 indicate to the parties at this point, since we have an
25 idea of what this case is all about, as to areas that

1 we would find further examination to be helpful.

2 Now, it may not accord necessarily with
3 what the various parties think would be helpful, but be
4 mindful of the fact that it is essentially this Board
5 that will make the decision and, notwithstanding that
6 the parties find a particular topic of considerable
7 interest to them, if we don't find it similarly
8 interesting, at least to that extent it's not very
9 helpful in terms of the process.

10 And what we are trying to do is to be
11 frank while at the same time allowing the parties an
12 opportunity to fairly present their views, but there
13 has to be some accommodation and that is what we hoped
14 the scoping sessions to some extent will accomplish.

15 Who have we left out?

16 DR. QUINNEY: Me so far.

17 THE CHAIRMAN: Oh sorry, we haven't
18 gotten your estimate yet, Dr. Quinney.

19 DR. QUINNEY: A maximum of three days.

20 THE CHAIRMAN: And Ms. Seaborn?

21 MS. SEABORN: Mr. Chairman, I think in
22 reviewing our statement of issues and the Board's
23 comments as to the areas they are interested in, and
24 unlike Mr. Cassidy, as someone with experience going
25 last, I think that we will be under half a day.

1 So I would say half a day, and I think
2 that would build in any flex time, as Mr. Freidin puts
3 it.

4 THE CHAIRMAN: That takes us to a maximum
5 of six days.

6 MR. MARTEL: We have Mr. Hunter yet
7 though.

8 THE CHAIRMAN: Oh sorry, Mr. Hunter. His
9 statement of issues was not extensive, that doesn't
10 mean that he won't take some time with the various
11 issues that he has identified, but we really can't
12 indicate how long he is going to be at this point in
13 time.

14 Well, it's obvious that with that
15 estimation, depending on Mr. Hunter of course, we will
16 obviously finish as we intended to do within the
17 allotted time.

18 Now, we would ask the parties that we do
19 not necessarily have to take the full nine days.
20 Again, just because we have the time available, if
21 necessary, does not mean that the Board will not be
22 vigilant in indicating clearly where it feels questions
23 are repetitious or where we feel that the line of
24 questioning is not particularly helpful to the Board,
25 and that is a general rule that will follow in these

1 proceedings as we go along.

2 I don't know whether it is necessary for
3 the parties to get together to try and agree on an
4 allocation of time in view of these estimates. We do
5 expect however that the parties will stick to these
6 estimates, because we are going to schedule the various
7 parties accordingly.

8 MR. LINDGREN: Mr. Chairman, perhaps I
9 can undertake to contact Ms. Swenarchuk. If she
10 anticipates being more than the one day that I have
11 indicated, then I will certainly advise the Board.

12 THE CHAIRMAN: Okay.

13 MR. FREIDIN: Mr. Chairman, one comment
14 arising out of the fact that this is a little different
15 than the earlier cross-examinations where we have a set
16 time period in which everybody has to cross-examine.

17 I would hope that Dean Baskerville's
18 examination-in-chief will in fact follow fairly closely
19 his witness statement but apropos I suppose of what Dr.
20 Quinney said, at the end of the direct examination it
21 may be that certain parties may wish to reconsider the
22 time that they would need which then would require the
23 parties to get together and bang our heads together and
24 then perhaps come back to you and say we would like a
25 little different allocation of time.

1 And I just point that out and would
2 assume that the Board would be willing to hear
3 submissions of that type if it turns out to be
4 necessary at the end of the evidence-in-chief.

5 THE CHAIRMAN: All right. I think the
6 Board can state, we are willing to sit for the nine
7 days to hear Dean Baskerville provided that within that
8 period of time the questions are relevant, stick within
9 the limits of the evidence which we have indicated that
10 we want him to give and to be cross-examined upon,
11 including some of the additional areas that we have
12 already discussed and, if it requires some reallocation
13 of the time, the Board will consider it.

14 We would expect all counsel and parties
15 to be courteous with each other in terms of indicating
16 how long they are going to be and when the next party
17 is ready to go. We do not want to change the order of
18 presentation from beyond what we have established
19 today. So we are asking all parties to kindly be
20 prepared to go when you are reached.

21 We do not also want to be in a position
22 of having downtime in an unnecessarily prolonging
23 fashion; in other words, if we end up at four o'clock
24 on a particular day we obviously wouldn't expect
25 necessarily the next party to go on, but we don't

1 expect to finish off at noon on one day and then have
2 downtime for an afternoon. We would rather have the
3 evidence flow day after day and, if there is any
4 additional time left, then Dean Baskerville can be
5 dismissed and can go back to New Brunswick early.

6 MR. CASSIDY: In that respect, Mr.
7 Chairman, I'm going to try and get a little bit better
8 estimate from Mr. Cosman. I think I indicated half a
9 day to a day. I think it would be helpful to the
10 Board's intention if I could narrow that down a bit and
11 I will try to do so, sir.

12 If for some reason he intends to go
13 longer than a day, and it's not my present advice from
14 him that that is the case, I will also advise the other
15 parties immediately, but I will try and get a better
16 estimate so we avoid that downtime in the event that he
17 only takes half a day when some people think he's going
18 to be a whole day.

19 THE CHAIRMAN: All right. Well, rather
20 than come back to the Board, why don't you negotiate
21 amongst yourselves if it's necessary and please advise
22 Mr. Turkstra who will basically be looking after Dean
23 Baskerville during his appearance and that will be
24 sufficient.

25 MR. CASSIDY: Thank you, sir.

1 MR. TURKSTRA: Mr. Chairman?

2 THE CHAIRMAN: Mr. Turkstra?

3 MR. TURKSTRA: Mr. Chairman, can I
4 perhaps address the Board on what Dr. Quinney
5 mentioned.

6 (I don't know if that is working or not.)

7 My notes - I'm going back over my notes -
8 or that what Mr. Hanna said that day was that on the
9 basis that the statement of issues would be ruled on
10 for relevance by the Board he would undertake not to
11 call Dr. Baskerville himself.

12 I think Mr. Cassidy has correctly
13 reminded me that Ms. Cronk had some submissions at the
14 time about the propriety of the Board carrying them on
15 and I had a very quick look at the transcript, but if
16 Dr. Quinney wants to argue the relevancy of the three
17 matters or the four matters that you dealt with - I
18 think the portions of the transcript are about five or
19 ten pages - it would be helpful to me if it might be
20 done this evening, because I have scheduled Dr.
21 Baskerville to arrive here on Thursday night, and I'm
22 going to ask the reporter to give me a transcript of
23 what happened here today, so that it would be helpful
24 to me if I could get the Board's ruling on that this
25 evening rather than to postpone a decision on that.

1 It's not a long exercise to go through
2 those transcripts, I think it can be done easily
3 enough.

4 THE CHAIRMAN: Well, the areas that the
5 Board sort of indicated that it really didn't want to
6 hear about further are not so much areas of relevancy.
7 It's hard to argue that some of the topics are not
8 relevant to the undertaking before us, but more towards
9 the question that we feel we have heard enough in that
10 area and plus the fact that, with relation to the Panel
11 16 evidence, we don't feel it's appropriate for Dean
12 Baskerville to be commenting on that evidence based on
13 his role in the audit and based on the fact that he has
14 not been a party to these proceedings.

15 So that I don't know, Dr. Quinney, if you
16 want to argue any of the points that we have indicated
17 that we would find not necessarily helpful to the Board
18 as to why they should be addressed, but we have given
19 you our honest opinion as to why we don't necessarily
20 want to hear from those two or three areas that we have
21 identified.

22 DR. QUINNEY: Yes, and we will certainly
23 take that into consideration, Mr. Chairman.

24 THE CHAIRMAN: So are you satisfied with
25 the scope of what Dr. Dean Baskerville can address as

1 far as we are concerned?

2 DR. QUINNEY: Well, to be quite frank,
3 Mr. Chairman, I have not decided that in all fairness
4 to our Federation that I can at this point exclude
5 points under additional issues 4(i) and (x), but what I
6 am saying is --

7 THE CHAIRMAN: Well, (i) is excluded
8 effectively because the Board is not going to deal with
9 that as far as Dean Baskerville is concerned. In other
10 words, we will decide in terms of rendering the
11 decision as to the appropriate effects monitoring
12 program based on the evidence presented to us. So I
13 think (i) is non-negotiable, and the same goes for MNR
14 who also wanted to address that issue.

15 Now, with respect to site degradation, we
16 have indicated why we don't feel we need more evidence
17 from Dean Baskerville on those details. We feel we've
18 had sufficient detail in that area on that issue and we
19 don't anticipate that there would be anything new or
20 startling emanating from questions of Dean Baskerville
21 in this area.

22 With respect to allowable cut effect, the
23 same comment. We have dealt extensively with the MAD
24 calculation and how it's arrived at and what is taken
25 into consideration and, again, unless there is

1 something startling and new that we are going to be
2 hearing from Dean Baskerville, we feel that that is a
3 repetition and an unnecessary repetition of evidence we
4 have already heard.

5 The role of the public in the process is
6 an ongoing concern, it's arisen in the context of
7 several panels, I would suggest it's going to arise
8 virtually in everybody's case to some extent and I
9 would assume it's also going to arise in terms of the
10 public sessions that we will be encountering when we go
11 on the remainder of the satellite hearings.

12 So, again, we are not necessarily
13 persuaded that Dean Baskerville's expertise in the role
14 of the public in the process is necessarily going to
15 add anything to (a) what we have already heard but,
16 more importantly, to what we suspect we are going to
17 hear from the remainder of the parties.

18 Apart from those areas, everything else
19 raised in your statement of issues can effectively be
20 addressed. So, again, we don't feel that there is a
21 lot of room for negotiation.

22 You see, we feel that we should be
23 entitled in these scoping sessions, having renewed the
24 witness statements, having reviewed the statements of
25 issues of the parties, to indicate to the parties what

1 the Board deems to be not just relevant but of
2 importance to the Board in the context of the evidence
3 that is already before the Board. And we are giving
4 you a clear indication of what we are interested in
5 hearing more about and, to that extent, we feel we are
6 helpful to the parties.

7 We are not just sitting here and
8 listening to whatever the parties wish to say much of
9 which, unknown to you, may not be of particular
10 importance to the Board. We feel it is a better use of
11 the public's time and money to indicate to the parties:
12 These are areas we are concerned about, these are areas
13 that we would like to hear more evidence about and, in
14 most cases quite frankly, it parallels the interests of
15 the various parties before the Board.

16 There are also areas that many of the
17 parties before the Board wish to hear about and wish to
18 examine upon. Sometimes we differ; we feel we can help
19 the process by indicating where we differ.

20 Anything further? Sorry.

21 MS. SEABORN: Mr. Chairman, just one
22 comment on the monitoring aspect. The only thing that
23 concerns me is that I can foresee that in response to a
24 different question, for example adaptive management,
25 Dean Baskerville himself may give an example that says:

1 Well, of course, you can always monitor.

2 I mean, I have no idea what he is going
3 to say, but the only thing I would caution the Board is
4 that if an answer arises through the
5 examination-in-chief or in cross-examination where we
6 mention monitoring, someone may have to follow up on
7 that.

8 THE CHAIRMAN: No, we expect the word
9 'monitor' to arise but, let's face it, we have heard
10 some evidence through Panel 16 on effects monitoring
11 and the other concepts that have been used, the
12 terminology, in a particular way. It's that area that
13 the Ministry is putting forward as part of their case
14 as to what they propose to do. We don't feel that Dean
15 Baskerville's expertise in that area, based on his
16 audit, is necessarily going to be helpful to the Board
17 in that context.

18 But you are right, I'm sure the word
19 'monitoring' will come up, I'm sure at the time it
20 comes up there will be a certain latitude. We are just
21 saying we don't want questions put ad infinitum to Dean
22 Baskerville on Panel 16's evidence. We are not sure
23 that he is apprised of Panel 16's evidence, to what
24 extent, it hasn't been one of the areas that really we
25 indicated through Mr. Turkstra that he should be

1 canvassing.

2 MS. SEABORN: Thank you.

3 THE CHAIRMAN: Dr. Quinney?

4 DR. QUINNEY: Mr. Chairman, just on a
5 slightly different topic, it's with reference to the
6 order of presentation of cross-examinations.

7 THE CHAIRMAN: Yes.

8 DR. QUINNEY: With the Board's permission
9 and that of the other parties, Mr. Hanna has a
10 scheduling conflict the second week in December.

11 THE CHAIRMAN: Okay. Just before you go
12 on to that, I want to make a statement on scheduling
13 conflicts. We might as well get it right out on the
14 table now.

15 The Board will not entertain scheduling
16 conflicts of any parties or counsel with respect to
17 other hearings which are ongoing before the
18 Environmental Assessment Board or a Joint Board. The
19 reason for that is that there are several hearings
20 scheduled before the Environmental Assessment Board
21 and/or before Joint Boards. They are going to be
22 ongoing for a number of months, some of those hearings
23 in parallel with this hearing and others, and it is
24 unfortunate in the Board's view if counsel are engaged
25 in more than one hearing or witnesses, et cetera.

1 We are not going to shut down either this
2 hearing or any other hearing before the EAB or the
3 Joint Boards in order to accommodate each other. It is
4 the responsibility, as far as we are concerned, of
5 counsel and the various parties that if they want to in
6 effect double book they are going to have to make
7 alternative arrangements.

8 Now, we have no objections with some of
9 the parties working it out amongst themselves, provided
10 that in the case of the cross-examinations the parties
11 that we have designated to go in particular spots;
12 i.e., at the end or at the beginning, go in those
13 designated spots. They are in that order for a reason.
14 Some of the parties in the middle may be able to
15 accommodate amongst themselves a different order to
16 which the Board would not necessarily object, and if
17 they want to work that out, that's fine.

18 But the Board is not going to be met with
19 the request from time to time from various parties to
20 say: I am appearing in another hearing, which happens
21 to involve this very Board or its counterpart a Joint
22 Board and, therefore, I can't be here to take the place
23 where I should be in the order on a particular day.

24 If that is the case and you can't make
25 arrangements that are satisfactory with some of your

1 colleagues preserving the order essentially that the
2 Board sets out, then you may lose your right to
3 cross-examination on that particular panel, and when
4 you can't appear in the appropriate order, then you can
5 cross-examine on the next panel.

6 And this is something that will arise.
7 We are going to soon have a third hearing -- not a
8 third hearing but another hearing probably taking place
9 in Thunder Bay before the Environmental Assessment
10 Board within the next four or five months. There is a
11 further, if I can put it in the context of a
12 mega-hearing, that is going to be before the
13 Environmental Assessment Board concerning Ontario Hydro
14 probably within the next six or eight months that may
15 last for a considerable number of months. OWMC, as
16 some of you are aware, is scheduled to start shortly,
17 it will probably last for several months, certainly
18 more than a year, maybe even more than two years.

19 We realize that various counsel and
20 various parties are involved in various cases, but it's
21 unfortunate you are going to have to make other
22 arrangements. We are not going to hold back this
23 hearing and we don't expect the other hearings to be
24 held back because counsel can't be in two places at the
25 same time. You may have to give up your rights on one

1 of them, or make other arrangements.

2 DR. QUINNEY: Mr. Chairman, it would be
3 then said it would not be appropriate for our
4 Federation to switch with FFT in this case?

5 THE CHAIRMAN: No, FFT - we have
6 indicated from the outset that FFT we expect to lead
7 off as far as those parties in opposition are
8 concerned.

9 In terms of parties in general, we have
10 indicated that we prefer MOE to be at the end and,
11 again, it's because of their role as a regulatory
12 agency and we feel that they should have the benefit of
13 hearing the parties' positions before they formulate
14 their own and they will have an ongoing regulatory role
15 subsequent to the hearing.

16 There is two or three parties in the
17 middle that I think you could switch with if you get
18 the agreement of other counsel, but everybody has
19 scheduling problems, that is the thing, and you have to
20 work it out amongst yourselves.

21 Anything else?

22 (no response)

23 Okay. If that is it, then we will close
24 this session. With respect to the scoping of Panel 17,
25 we indicated this morning that we will probably put

1 this off until next week. Tomorrow late in the day we
2 will deal with the further submissions from other
3 counsel on dealing with the media.

4 Perhaps we should --

5 MR. CASSIDY: It would be Tuesday night
6 or Wednesday night, if we are going to do it after
7 hours.

8 THE CHAIRMAN: Well, we would like to
9 again do it after hours to the extent that we want to
10 finish this panel and we believe, based on the
11 estimates of counsel, that we can prior to rising at
12 the end of next week.

13 MR. CASSIDY: If it's your intention to
14 start on Thursday the 30th at 8:00 a.m. in the morning,
15 might I be so bold as to suggest we do the scoping
16 session on Tuesday night so it doesn't make for such a
17 long day.

18 THE CHAIRMAN: All right. We will set
19 next Tuesday evening. When we say the evening, it may
20 be at the end of the day prior to breaking for dinner
21 as opposed to an evening session. And the scoping
22 session for Panel 17 should not take as long as
23 tonight's session, we don't anticipate.

24 MR. CASSIDY: It's Tuesday, November
25 28th?

1 THE CHAIRMAN: That's correct.

2 MR. CASSIDY: Thank you, sir.

3 THE CHAIRMAN: Very well. Anything
4 further?

5 (no response)

6 We will adjourn until tomorrow at 8:30.

7 Thank you.

8 ---Whereupon the hearing adjourned at 8:00 p.m., to be
9 reconvened on Tuesday, November 21st, 1989,
commencing at 8:30 a.m.

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